

AMENDED IN SENATE MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 109

Introduced by Committee on Budget (Blumenfield (Chair), Alejo, Allen, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)

January 10, 2011

~~An act relating to the Budget Act of 2011.~~ *An act to amend Sections 585, 650, 654.1, 655.5, 729, 1282.3, 1701, 1701.1, 1960, 2052, 2315, 4324, 5536.5, 6126, 6153, 6788, 7028.16, 7739, 10238.6, 11020, 11023, 11286, 11287, 11320, 16755, 17511.9, 17550.19, 22430, and 25618 of the Business and Professions Code, to amend Sections 892, 1695.8, 1812.125, 1812.217, 2945.7, 2985.2, and 2985.3 of the Civil Code, to amend Sections 2255, 2256, 6811, 6814, 8812, 8815, 12672, 12675, 22002, 25540, 27202, 28880, 29102, 29550, 31410, 31411, and 35301 of the Corporations Code, to amend Section 7054 of the Education Code, to amend Sections 18002, 18100, 18101, 18102, 18106, 18200, 18201, 18203, 18204, 18205, 18310, 18311, 18400, 18403, 18502, 18520, 18521, 18522, 18523, 18524, 18540, 18544, 18545, 18560, 18561, 18564, 18566, 18567, 18568, 18573, 18575, 18578, 18611, 18613, 18614, 18620, 18621, 18640, 18660, 18661, and 18680 of the Elections Code, to amend Sections 3510, 3532, 5300, 5302, 5303, 5304, 5305, 5307, 10004, 12102, 14752, 17700, 18349.5, 18435, 22753, 22780, 31880, and 50500 of the Financial Code, to amend Sections 12004 and 12005 of the Fish and Game Code, to amend Sections 17701, 18932, 18933, 19440, 19441, and 80174 of the Food and Agriculture Code, to amend Sections 1195, 1368, 1369, 3108, 3109, 5954, 6200, 6201, 9056, 27443, and 51018.7 of the Government Code, to amend Sections 264, 310, and 668 of the Harbors and Navigation Code, to amend Sections 1390, 1522.01, 1621.5, 7051, 7051.5, 8113.5, 8785,*

11100, 11100.1, 11105, 11153, 11153.5, 11162.5, 11350, 11351, 11351.5, 11352, 11353.5, 11353.6, 11353.7, 11356, 11357, 11358, 11359, 11360, 11362, 11366.5, 11366.6, 11366.8, 11370.6, 11371, 11371.1, 11374.5, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380.7, 11381, 11383, 11383.5, 11383.6, 11383.7, 12401, 12700, 17061, 18124.5, 25180.7, 25189.5, 25189.6, 25189.7, 25190, 25191, 25395.13, 25515, 25541, 42400.3, 44209, 100895, 109335, 115215, 116730, 116750, 118340, and 131130 of the Health and Safety Code, to amend Sections 700, 750, 833, 1043, 1215.10, 1764.7, 1814, 1871.4, 10192.165, 11161, 11162, 11163, 11760, 11880, 12660, and 12845 of the Insurance Code, to amend Sections 227, 6425, and 7771 of the Labor Code, to amend Sections 145, 1318, 1672, and 1673, of the Military and Veterans Code, to amend Sections 17, 18, 19.2, 33, 38, 67.5, 69, 71, 72, 72.5, 76, 95, 95.1, 96, 99, 107, 109, 113, 114, 115.1, 126, 136.7, 137, 139, 140, 142, 146a, 146e, 148, 148.1, 148.3, 148.4, 148.10, 149, 153, 156, 157, 168, 171c, 171d, 181, 182, 186.10, 186.22, 186.26, 186.28, 186.33, 191.5, 193, 193.5, 210.5, 217.1, 218.1, 219.1, 222, 237, 241.1, 241.4, 241.7, 243, 243.1, 243.6, 244.5, 245, 245.6, 246.3, 247.5, 261.5, 265, 266b, 266e, 266f, 266g, 271, 271a, 273.4, 273.6, 273.65, 273d, 278, 278.5, 280, 284, 288.2, 290.018, 290.4, 290.45, 290.46, 298.2, 299.5, 311.9, 313.4, 337.3, 337.7, 337b, 337c, 337d, 337e, 337f, 350, 367f, 367g, 368, 374.2, 374.8, 375, 382.5, 382.6, 386, 387, 399.5, 404.6, 405b, 417, 417.3, 417.6, 422, 422.7, 453, 455, 461, 463, 464, 470a, 470b, 473, 474, 478, 479, 480, 481, 483.5, 484b, 484i, 487b, 487d, 489, 496, 496a, 496d, 499c, 499d, 500, 502, 506b, 520, 529, 529a, 530.5, 532a, 532f, 533, 535, 537e, 538.5, 548, 549, 550, 551, 560, 560.4, 566, 570, 577, 578, 580, 581, 587, 587.1, 591, 593, 594, 594.3, 594.35, 594.4, 597, 597.5, 598c, 598d, 600, 601, 610, 617, 620, 621, 625b, 626.9, 626.95, 626.10, 629.84, 631, 636, 637, 647.6, 653f, 653h, 653j, 653s, 653t, 653u, 653w, 664, 666, 666.5, 667.5, 668, 800, 801, 803, 836.6, 1168, 1170, 1174.4, 1203.016, 1208.2, 1213, 1320, 1320.5, 2600, 2650, 2772, 2790, 2900.5, 2932, 3000, 3000.1, 3001, 3003, 3056, 3057, 4011.7, 4016.5, 4019, 4131.5, 4501.1, 4502, 4530, 4532, 4533, 4536, 4550, 4573, 4573.6, 4573.9, 4574, 4600, 11411, 11413, 11418, 11419, 12021, 12021.1, 12021.5, 12022, 12022.5, 12022.9, 12025, 12035, 12040, 12072, 12076, 12090, 12101, 12220, 12280, 12281, 12303.3, 12303.6, 12304, 12312, 12320, 12355, 12370, 12403.7, 12422, 12520, 18715, 18720, 18725, 18730, 18735, 18740, 20110, 22810, 22910, 23900, 25110, 25300, 25400, 25850, 27590, 28250, 29700, 30315, 30600, 30605, 30725, 31360, 32625, and 33410

of, to add Sections 17.5, 1203.018, 1230.1, 2057, 3000.08, and 3000.09 to, to add Title 2.05 (commencing with Section 3450) to Part 3 of, and to repeal Sections 3060 and 3061 of, the Penal Code, to amend Sections 10283 and 10873 of the Public Contract Code, to amend Sections 5097.99, 14591, 25205, and 48680 of the Public Resources Code, to amend Sections 7680, 7724, 7903, and 21407.6 of the Public Utilities Code, to amend Sections 7093.6, 9278, 14521, 16910, 18631.7, 19705, 19708, 30459.15, 32471.5, 32555, 38800, 40211.5, 41171.5, 43522.5, 43606, 45867.5, 45955, 46628, 46705, 50156.18, 55332.5, 55363, and 60637 of the Revenue and Taxation Code, to amend Sections 2478, 2800.4, 4463, 10501, 10752, 10801, 10802, 10803, 10851, 21464, 21651, 23104, 23105, 23109, 23109.1, 23110, 23550, and 42000 of the Vehicle Code, to amend Section 13387 of the Water Code, and to amend Sections 871.5, 1001.5, 1731.5, 1768.7, 1768.85, 3002, 7326, 8100, 8101, 8103, 10980, 14107.2, 14107.3, 14107.4, and 17410 of, and to add Section 1710.5 to, the Welfare and Institutions Code, relating to criminal justice realignment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

AB 109, as amended, Committee on Budget. ~~Budget Act of 2011.~~
Criminal justice alignment.

(1) Existing law defines a felony as a crime which is punishable with death or by imprisonment in the state prison. Existing law also provides that except in cases where a different punishment is prescribed by law, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. Every offense which is prescribed to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

This bill would instead provide that a felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail for more than one year. The bill would generally provide that felonies are punishable by imprisonment in a county jail for 16 months, or 2 or 3 years. The bill provides exceptions to imprisonment in a county

jail for a variety of felonies, including serious felonies and violent felonies, as defined, felonies requiring registration as a sex offender, and when the defendant has a prior conviction for a serious or violent felony, or a felony subjecting the defendant to registration as a sex offender, among other exceptions.

The bill would authorize counties to contract with the Department of Corrections and Rehabilitation for beds in state prisons for the commitment of persons from the county convicted of a felony.

(2) Existing law establishes within the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, consisting of the Division of Juvenile Facilities, the Division of Juvenile Programs, and the Division of Juvenile Parole Operations, which operate the statewide system governing wards of the court and other persons committed to the department, and the detention, rehabilitation, probation, and parole thereof. Under existing law, and under specified circumstances, the juvenile court is authorized to commit persons to the Division of Juvenile Justice.

This bill would provide that on and after July 1, 2011, unless a county has entered a memorandum of understanding with the state, the Division of Juvenile Justice shall no longer accept any juvenile offender commitments from the juvenile courts. The bill would, notwithstanding any other law and on and after July 1, 2011, authorize a county to enter into a memorandum of understanding with the state to provide for the admission of minors adjudicated for specified offenses to the Division of Juvenile Justice.

(3) Existing law authorizes the board of supervisors of any county to authorize the correctional administrator to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program in lieu of confinement in the county jail or other county correctional facility under the auspices of the probation officer. Existing law provides that the board of supervisors of any county may, upon determination by the correctional administrator that conditions in a jail facility warrant the necessity of releasing sentenced misdemeanor inmates prior to their serving the full amount of a given sentence due to lack of jail space, offer a program under which specified inmates may be required to participate in an involuntary home detention program.

This bill would enhance the authorization granted to the correctional administrator to offer a voluntary home detention program to include all inmates and additionally subject those inmates to involuntary participation in a home detention program. The bill would provide that the board of supervisors of any county may authorize the correctional administrator to offer a program under which inmates being held in lieu of bail may be placed in an electronic monitoring program, as specified. The bill would establish criteria for inmates to be eligible for the electronic monitoring program. The bill would make it a misdemeanor for any inmate who is a participant in an electronic monitoring program to fail to comply with the prescribed rules and regulations. By creating a new crime, the bill would impose a state-mandated local program.

(4) Existing law provides for an administrative and application fee for specified work furlough and voluntary electronic home detention program participants. Existing law limits the fees to the pro rata cost of the program to which the person is accepted, as specified. Existing law exempts privately operated voluntary electronic monitoring programs from this fee limitation.

This bill would additionally exempt electronic monitoring programs created by this bill from the fee limitation.

(5) Existing law provides that in all felony and misdemeanor convictions when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough, facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation credited to the period of confinement, as specified, shall be credited upon his or her term of imprisonment, or credited to any fine, as specified.

This bill includes all days served in a home detention program to that provision, as specified. The bill would also provide that time served in a home detention program, as specified, shall qualify as mandatory time in jail.

(6) Existing law provides that in regards to persons sentenced to the state prison, except for certain specified prisoners, for every 6 months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of 6 months, as specified, and that a lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous incarceration. Credit accumulated pursuant to those provisions may be denied or lost for any specified act

committed by the prisoner, including acts for misconduct that could be prosecuted as a felony or a misdemeanor, or misconduct that is a serious disciplinary offense. Existing law requires the Department of Corrections and Rehabilitation to provide notice to a prisoner regarding the denial or loss of credits and permits the prisoner to appeal the decision of the department, as specified.

This bill would provide that credit accumulated while a prisoner is confined to a county jail, city jail, industrial farm, or road camp may be denied or lost for any specified act. The bill would require, for those prisoners confined to a county jail, city jail, industrial farm, or road camp, the sheriff or director of the county correctional department to provide notice to a prisoner regarding the denial or loss of credits and would permit the prisoner to appeal the decision of the sheriff or director of the county correctional department, as specified. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

(7) Existing law provides time credit for work performance and good behavior to prisoners confined to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp. Specifically, except regarding certain prisoners who are limited to 15% credit against sentenced time, existing law provides that a term of 6 days will be deemed to have been served for every 4 days spent in actual custody, as specified.

This bill would require, for prisoners whose crimes are committed on or after July 1, 2011, except those who are limited to 15% credit against sentenced time, and who are confined to a county jail, city jail, industrial farm, or road camp, that a term of 4 days be deemed to have been served for every 2 days spent in actual custody, as specified.

(8) Existing law generally provides that the Board of Parole Hearings, a state agency, shall have the power to allow prisoners imprisoned in the state prisons to go upon parole outside the prison walls and enclosures, as specified. Existing law authorizes each county to establish a local Community Corrections Partnership to provide a system of felony probation supervision services, as specified.

This bill would enact the Postrelease Community Supervision Act of 2011 to provide that any person released from prison on or after July 1, 2011, after serving a term in prison for certain felonies that are, among other things, not serious or violent, shall be subject to, for a period not exceeding 3 years, community supervision provided by a county agency designated by that county's board of supervisors, as

prescribed. By imposing additional duties as local agencies, this bill would impose a state-mandated local program. The bill would also require the courts to establish a process to determine if there has been a violation of the conditions of the postrelease supervision, and the courts would be authorized to take certain actions upon such a finding. The bill would establish within each county local Community Corrections Partnership an executive committee, as specified, to recommend a local plan to the county board of supervisors on how the 2011 public safety realignment should be implemented within that county.

(9) Existing law generally commits persons convicted of felonies to the jurisdiction of the Department of Corrections and Rehabilitation. Existing law also provides for parole of those felons, under the jurisdiction of the Board of Parole Hearings.

This bill would limit the jurisdiction of the Board of Parole Hearings for purposes of parole supervision by providing that persons who are released from prison after serving terms for a serious felony, as defined, a violent felony, as defined, a term imposed because of 2 or more prior felony convictions, as specified, or a term for an offense whereby the person may be classified as a High Risk Sex Offender, would be subject to parole supervision by the department or the court, as specified.

The bill would require that any parolee who was paroled from state prison prior to July 1, 2011, be subject to certain parole supervision requirements, including, but not limited to, that he or she remain under the supervision of the department until a specified circumstance occurs, and that those parolees, being held for a parole violation in county jail on July 1, 2011, be subject to the jurisdiction of the board. Eligible parolees released from prison after serving terms for a serious felony, a violent felony, a term imposed because of 2 or more prior felony convictions, as specified, or a term for an offense whereby the person may be classified as a High Risk Sex Offender, whose parole is revoked by the board, would be remanded to state prison, and after his or her release jurisdiction over the parolee would remain under the Division of Adult Parole Operations. Any subsequent revocation action would be conducted by the court in the county into which the parolee was released.

(10) Existing law, as amended by Proposition 83 when that initiative was approved by the voters at the November 7, 2006, statewide general election, requires a person who has been convicted of a specified sex offense and who has been released on parole from state prison, to be

discharged from parole by the board if he or she has been on parole continuously for 6 years since release from confinement, or 20 years in the case of conviction for specified sex offenses, unless the board determines, for good cause, that the person will be retained on parole. A measure that amends Proposition 83 requires a $\frac{2}{3}$ vote in each house unless the measure expands the scope of the application of the proposition's provisions or increases the punishments or penalties provided therein.

This bill would transfer the above-referenced duties from the board to the courts. The bill would increase the above-described parole periods to 6½ years and 20½ years, respectively.

(11) Existing law generally requires an inmate who is released on parole to be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law also requires the department to release specified information regarding paroled inmates to local law enforcement, as specified, and to control and be responsible for the Law Enforcement Automated Data System (LEADS) regarding that information.

This bill would generally require an inmate who is released under a postrelease supervision program to be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. The bill would also require the Department of Corrections and Rehabilitation to include information on inmates released under a postrelease supervision program in LEADS. The bill would require county agencies supervising inmates released under a postrelease supervision program to provide to the department any inmate information requested by the department that is to be used in LEADS. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

(12) The bill would make additional conforming changes.

(13) By imposing additional burdens on local government entities, this bill would impose a state-mandated local program.

(14) The bill would become operative no earlier than July 1, 2011, and only upon creation of a community corrections grant program to assist in implementing this act and upon an appropriation to fund the grant program.

(15) This bill would appropriate \$1,000 from the General Fund to the Department of Corrections and Rehabilitation for purposes of state operations.

(16) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(17) *The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 20, 2011.*

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(18) *This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *This act is titled and may be cited as the 2011*
2 *Realignment Legislation addressing public safety.*
3 SEC. 2. *Section 585 of the Business and Professions Code is*
4 *amended to read:*
5 585. Any person, company, or association violating the
6 provisions of this article is guilty of a felony and upon conviction
7 thereof shall be punishable by a fine of not less than two thousand
8 dollars (\$2,000) nor more than six thousand dollars (\$6,000), or
9 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
10 *Section 1170 of the Penal Code.* The enforcement remedies
11 provided under this article are not exclusive and shall not preclude
12 the use of any other criminal, civil, or administrative remedy.

1 *SEC. 3. Section 650 of the Business and Professions Code is*
2 *amended to read:*

3 650. (a) Except as provided in Chapter 2.3 (commencing with
4 Section 1400) of Division 2 of the Health and Safety Code, the
5 offer, delivery, receipt, or acceptance by any person licensed under
6 this division or the Chiropractic Initiative Act of any rebate, refund,
7 commission, preference, patronage dividend, discount, or other
8 consideration, whether in the form of money or otherwise, as
9 compensation or inducement for referring patients, clients, or
10 customers to any person, irrespective of any membership,
11 proprietary interest, or coownership in or with any person to whom
12 these patients, clients, or customers are referred is unlawful.

13 (b) The payment or receipt of consideration for services other
14 than the referral of patients which is based on a percentage of gross
15 revenue or similar type of contractual arrangement shall not be
16 unlawful if the consideration is commensurate with the value of
17 the services furnished or with the fair rental value of any premises
18 or equipment leased or provided by the recipient to the payer.

19 (c) The offer, delivery, receipt, or acceptance of any
20 consideration between a federally qualified health center, as defined
21 in Section 1396d(l)(2)(B) of Title 42 of the United States Code,
22 and any individual or entity providing goods, items, services,
23 donations, loans, or a combination thereof to the health center
24 entity pursuant to a contract, lease, grant, loan, or other agreement,
25 if that agreement contributes to the ability of the health center
26 entity to maintain or increase the availability, or enhance the
27 quality, of services provided to a medically underserved population
28 served by the health center, shall be permitted only to the extent
29 sanctioned or permitted by federal law.

30 (d) Except as provided in Chapter 2.3 (commencing with Section
31 1400) of Division 2 of the Health and Safety Code and in Sections
32 654.1 and 654.2 of this code, it shall not be unlawful for any person
33 licensed under this division to refer a person to any laboratory,
34 pharmacy, clinic (including entities exempt from licensure pursuant
35 to Section 1206 of the Health and Safety Code), or health care
36 facility solely because the licensee has a proprietary interest or
37 coownership in the laboratory, pharmacy, clinic, or health care
38 facility, provided, however, that the licensee's return on investment
39 for that proprietary interest or coownership shall be based upon
40 the amount of the capital investment or proportional ownership of

1 the licensee which ownership interest is not based on the number
2 or value of any patients referred. Any referral excepted under this
3 section shall be unlawful if the prosecutor proves that there was
4 no valid medical need for the referral.

5 (e) Except as provided in Chapter 2.3 (commencing with Section
6 1400) of Division 2 of the Health and Safety Code and in Sections
7 654.1 and 654.2 of this code, it shall not be unlawful to provide
8 nonmonetary remuneration, in the form of hardware, software, or
9 information technology and training services, as described in
10 subsections (x) and (y) of Section 1001.952 of Title 42 of the Code
11 of Federal Regulations, as amended October 4, 2007, as published
12 in the Federal Register (72 Fed. Reg. 56632 and 56644), and
13 subsequently amended versions.

14 (f) "Health care facility" means a general acute care hospital,
15 acute psychiatric hospital, skilled nursing facility, intermediate
16 care facility, and any other health facility licensed by the State
17 Department of Public Health under Chapter 2 (commencing with
18 Section 1250) of Division 2 of the Health and Safety Code.

19 (g) A violation of this section is a public offense and is
20 punishable upon a first conviction by imprisonment in a county
21 jail for not more than one year, or by imprisonment ~~in the state~~
22 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
23 ~~Code~~, or by a fine not exceeding fifty thousand dollars (\$50,000),
24 or by both that imprisonment and fine. A second or subsequent
25 conviction is punishable by imprisonment ~~in the state prison~~
26 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or
27 by ~~that~~ imprisonment ~~in the state prison~~ and a fine of fifty thousand
28 dollars (\$50,000).

29 *SEC. 4. Section 654.1 of the Business and Professions Code*
30 *is amended to read:*

31 654.1. Persons licensed under Chapter 4 (commencing with
32 Section 1600) of this division or licensed under Chapter 5
33 (commencing with Section 2000) of this division or licensed under
34 any initiative act referred to in this division relating to osteopaths
35 may not refer patients, clients, or customers to any clinical
36 laboratory licensed under Section 1265 in which the licensee has
37 any membership, proprietary interest, or coownership in any form,
38 or has any profit-sharing arrangement, unless the licensee at the
39 time of making such referral discloses in writing such interest to
40 the patient, client, or customer. The written disclosure shall indicate

1 that the patient may choose any clinical laboratory for purposes
2 of having any laboratory work or assignment performed.

3 This section shall not apply to persons who are members of a
4 medical group which contracts to provide medical care to members
5 of a group practice prepayment plan registered under the
6 Knox-Keene Health Care Service Act of 1975, Chapter 2.2
7 (commencing with Section 1340) of Division 2 of the Health and
8 Safety Code.

9 This section shall not apply to any referral to a clinical laboratory
10 which is owned and operated by a health facility licensed pursuant
11 to Chapter 2 (commencing with Section 1250) of Division 2 of
12 the Health and Safety Code.

13 This section does not prohibit the acceptance of evaluation
14 specimens for proficiency testing or referral of specimens or such
15 assignment from one clinical laboratory to another clinical
16 laboratory, either licensed or exempt under this chapter, providing
17 the report indicates clearly the laboratory performing the test.

18 “Proprietary interest” does not include ownership of a building
19 where space is leased to a clinical laboratory at the prevailing rate
20 under a straight lease arrangement.

21 A violation of this section is a public offense and is punishable
22 upon a first conviction by imprisonment in ~~the a~~ county jail for
23 not more than one year, or by imprisonment ~~in the state prison~~
24 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
25 by a fine not exceeding ten thousand dollars (\$10,000), or by both
26 ~~such~~ *that* imprisonment and fine. A second or subsequent
27 conviction shall be punishable by imprisonment ~~in the state prison~~
28 *pursuant to subdivision (h) of Section 1170 of the Penal Code*.

29 *SEC. 5. Section 655.5 of the Business and Professions Code*
30 *is amended to read:*

31 655.5. (a) It is unlawful for any person licensed under this
32 division or under any initiative act referred to in this division, or
33 any clinical laboratory, or any health facility when billing for a
34 clinical laboratory of the facility, to charge, bill, or otherwise solicit
35 payment from any patient, client, or customer for any clinical
36 laboratory service not actually rendered by the person or clinical
37 laboratory or under his, her or its direct supervision unless the
38 patient, client, or customer is apprised at the first time of the
39 charge, billing, or solicitation of the name, address, and charges
40 of the clinical laboratory performing the service. The first such

1 written charge, bill, or other solicitation of payment shall separately
2 set forth the name, address, and charges of the clinical laboratory
3 concerned and shall clearly show whether or not the charge is
4 included in the total of the account, bill, or charge. This subdivision
5 shall be satisfied if the required disclosures are made to the
6 third-party payer of the patient, client, or customer. If the patient
7 is responsible for submitting the bill for the charges to the
8 third-party payer, the bill provided to the patient for that purpose
9 shall include the disclosures required by this section. This
10 subdivision shall not apply to a clinical laboratory of a health
11 facility or a health facility when billing for a clinical laboratory of
12 the facility nor to a person licensed under this division or under
13 any initiative act referred to in this division if the standardized
14 billing form used by the facility or person requires a summary
15 entry for all clinical laboratory charges. For purposes of this
16 subdivision, "health facility" has the same meaning as defined in
17 Section 1250 of the Health and Safety Code.

18 (b) Commencing July 1, 1994, a clinical laboratory shall provide
19 to each of its referring providers, upon request, a schedule of fees
20 for services provided to patients of the referring provider. The
21 schedule shall be provided within two working days after the
22 clinical laboratory receives the request. For the purposes of this
23 subdivision, a "referring provider" means any provider who has
24 referred a patient to the clinical laboratory in the preceding
25 six-month period. Commencing July 1, 1994, a clinical laboratory
26 that provides a list of laboratory services to a referring provider
27 or to a potential referring provider shall include a schedule of fees
28 for the laboratory services listed.

29 (c) It is also unlawful for any person licensed under this division
30 or under any initiative act referred to in this division to charge
31 additional charges for any clinical laboratory service that is not
32 actually rendered by the licensee to the patient and itemized in the
33 charge, bill, or other solicitation of payment. This section shall not
34 be construed to prohibit any of the following:

35 (1) Any itemized charge for any service actually rendered to
36 the patient by the licensee.

37 (2) Any summary charge for services actually rendered to a
38 patient by a health facility, as defined in Section 1250 of the Health
39 and Safety Code, or by a person licensed under this division or
40 under any initiative act referred to in this division if the

1 standardized billing form used by the facility or person requires a
2 summary entry for all clinical laboratory charges.

3 (d) As used in this section, the term “any person licensed under
4 this division” includes a person licensed under paragraph (1) of
5 subdivision (a) of Section 1265, all wholly owned subsidiaries of
6 the person, a parent company that wholly owns the person, and
7 any subsidiaries wholly owned by the same parent that wholly
8 owns the person. “Wholly owned” means ownership directly or
9 through one or more subsidiaries. This section shall not apply to
10 billings by a person licensed under paragraph (1) of subdivision
11 (a) of Section 1265 when the person licensed under paragraph (1)
12 of subdivision (a) of Section 1265 bills for services performed by
13 any laboratory owned or operated by the person licensed under
14 paragraph (1) of subdivision (a) of Section 1265.

15 (e) This section shall not apply to any person or clinical
16 laboratory who or which contracts directly with a health care
17 service plan licensed pursuant to Section 1349 of the Health and
18 Safety Code, if the services are to be provided to members of the
19 plan on a prepaid basis and without additional charge or liability
20 on account thereof.

21 (f) A violation of this section is a public offense and is
22 punishable upon a first conviction by imprisonment in ~~the a county~~
23 jail for not more than one year, or by imprisonment ~~in the state~~
24 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
25 ~~Code~~, or by a fine not exceeding ten thousand dollars (\$10,000),
26 or by both that imprisonment and fine. A second or subsequent
27 conviction is punishable by imprisonment ~~in the state prison~~
28 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~.

29 (g) (1) Notwithstanding subdivision (f), a violation of this
30 section by a physician and surgeon for a first offense shall be
31 subject to the exclusive remedy of reprimand by the Medical Board
32 of California if the transaction that is the subject of the violation
33 involves a charge for a clinical laboratory service that is less than
34 the charge would have been if the clinical laboratory providing
35 the service billed a patient, client, or customer directly for the
36 clinical laboratory service, and if that clinical laboratory charge is
37 less than the charge listed in the clinical laboratory’s schedule of
38 fees pursuant to subdivision (b).

39 (2) Nothing in this subdivision shall be construed to permit a
40 physician and surgeon to charge more than he or she was charged

1 for the laboratory service by the clinical laboratory providing the
2 service unless the additional charge is for service actually rendered
3 by the physician and surgeon to the patient.

4 *SEC. 6. Section 729 of the Business and Professions Code is*
5 *amended to read:*

6 729. (a) Any physician and surgeon, psychotherapist, alcohol
7 and drug abuse counselor or any person holding himself or herself
8 out to be a physician and surgeon, psychotherapist, or alcohol and
9 drug abuse counselor, who engages in an act of sexual intercourse,
10 sodomy, oral copulation, or sexual contact with a patient or client,
11 or with a former patient or client when the relationship was
12 terminated primarily for the purpose of engaging in those acts,
13 unless the physician and surgeon, psychotherapist, or alcohol and
14 drug abuse counselor has referred the patient or client to an
15 independent and objective physician and surgeon, psychotherapist,
16 or alcohol and drug abuse counselor recommended by a third-party
17 physician and surgeon, psychotherapist, or alcohol and drug abuse
18 counselor for treatment, is guilty of sexual exploitation by a
19 physician and surgeon, psychotherapist, or alcohol and drug abuse
20 counselor.

21 (b) Sexual exploitation by a physician and surgeon,
22 psychotherapist, or alcohol and drug abuse counselor is a public
23 offense:

24 (1) An act in violation of subdivision (a) shall be punishable by
25 imprisonment in a county jail for a period of not more than six
26 months, or a fine not exceeding one thousand dollars (\$1,000), or
27 by both that imprisonment and fine.

28 (2) Multiple acts in violation of subdivision (a) with a single
29 victim, when the offender has no prior conviction for sexual
30 exploitation, shall be punishable by imprisonment in a county jail
31 for a period of not more than six months, or a fine not exceeding
32 one thousand dollars (\$1,000), or by both that imprisonment and
33 fine.

34 (3) An act or acts in violation of subdivision (a) with two or
35 more victims shall be punishable by imprisonment ~~in the state~~
36 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
37 *Code* for a period of 16 months, two years, or three years, and a
38 fine not exceeding ten thousand dollars (\$10,000); or the act or
39 acts shall be punishable by imprisonment in a county jail for a

1 period of not more than one year, or a fine not exceeding one
2 thousand dollars (\$1,000), or by both that imprisonment and fine.

3 (4) Two or more acts in violation of subdivision (a) with a single
4 victim, when the offender has at least one prior conviction for
5 sexual exploitation, shall be punishable by imprisonment ~~in the~~
6 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
7 *Penal Code* for a period of 16 months, two years, or three years,
8 and a fine not exceeding ten thousand dollars (\$10,000); or the act
9 or acts shall be punishable by imprisonment in a county jail for a
10 period of not more than one year, or a fine not exceeding one
11 thousand dollars (\$1,000), or by both that imprisonment and fine.

12 (5) An act or acts in violation of subdivision (a) with two or
13 more victims, and the offender has at least one prior conviction
14 for sexual exploitation, shall be punishable by imprisonment ~~in~~
15 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
16 *Penal Code* for a period of 16 months, two years, or three years,
17 and a fine not exceeding ten thousand dollars (\$10,000).

18 For purposes of subdivision (a), in no instance shall consent of
19 the patient or client be a defense. However, physicians and
20 surgeons shall not be guilty of sexual exploitation for touching
21 any intimate part of a patient or client unless the touching is outside
22 the scope of medical examination and treatment, or the touching
23 is done for sexual gratification.

24 (c) For purposes of this section:

25 (1) "Psychotherapist" has the same meaning as defined in
26 Section 728.

27 (2) "Alcohol and drug abuse counselor" means an individual
28 who holds himself or herself out to be an alcohol or drug abuse
29 professional or paraprofessional.

30 (3) "Sexual contact" means sexual intercourse or the touching
31 of an intimate part of a patient for the purpose of sexual arousal,
32 gratification, or abuse.

33 (4) "Intimate part" and "touching" have the same meanings as
34 defined in Section 243.4 of the Penal Code.

35 (d) In the investigation and prosecution of a violation of this
36 section, no person shall seek to obtain disclosure of any
37 confidential files of other patients, clients, or former patients or
38 clients of the physician and surgeon, psychotherapist, or alcohol
39 and drug abuse counselor.

1 (e) This section does not apply to sexual contact between a
2 physician and surgeon and his or her spouse or person in an
3 equivalent domestic relationship when that physician and surgeon
4 provides medical treatment, other than psychotherapeutic treatment,
5 to his or her spouse or person in an equivalent domestic
6 relationship.

7 (f) If a physician and surgeon, psychotherapist, or alcohol and
8 drug abuse counselor in a professional partnership or similar group
9 has sexual contact with a patient in violation of this section, another
10 physician and surgeon, psychotherapist, or alcohol and drug abuse
11 counselor in the partnership or group shall not be subject to action
12 under this section solely because of the occurrence of that sexual
13 contact.

14 *SEC. 7. Section 1282.3 of the Business and Professions Code*
15 *is amended to read:*

16 1282.3. (a) It is unlawful for any person to act with willful or
17 wanton disregard for a person's safety that exposes the person to
18 a substantial risk of, or that causes, great bodily injury by affecting
19 the integrity of a clinical laboratory test or examination result
20 through improper collection, handling, storage, or labeling of the
21 biological specimen or the erroneous transcription or reporting of
22 clinical laboratory test or examination results.

23 (b) Notwithstanding Section 1287, a violation of this section
24 shall be punished as follows:

25 (1) A first conviction is punishable by imprisonment in a county
26 jail for a period of not more than one year, or by imprisonment ~~in~~
27 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
28 *Penal Code* for 16 months, or two or three years, by a fine not
29 exceeding fifty thousand dollars (\$50,000), or by both this
30 imprisonment and fine.

31 (2) A second or subsequent conviction is punishable by
32 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
33 *Section 1170 of the Penal Code* for two, four, or six years, or by
34 a fine not exceeding fifty thousand dollars (\$50,000), or by both
35 this imprisonment and fine.

36 (c) The enforcement remedies provided under this section are
37 not exclusive, and shall not preclude the use of any other criminal
38 or civil remedy. However, an act or omission punishable in
39 different ways by this section and any other provision of law shall
40 not be punished under more than one provision. Under those

1 circumstances, the penalty to be imposed shall be determined as
2 set forth in Section 654 of the Penal Code.

3 *SEC. 8. Section 1701 of the Business and Professions Code is*
4 *amended to read:*

5 1701. Any person is for the first offense guilty of a
6 misdemeanor and shall be punishable by a fine of not less than
7 two hundred dollars (\$200) or more than three thousand dollars
8 (\$3,000), or by imprisonment in ~~the~~ a county jail for not to exceed
9 six months, or both, and for the second or a subsequent offense is
10 guilty of a felony and upon conviction thereof shall be punished
11 by a fine of not less than two thousand dollars (\$2,000) nor more
12 than six thousand dollars (\$6,000), or by imprisonment ~~in the state~~
13 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
14 Code, or by both such fine and imprisonment, who:

15 (a) Sells or barter or offers to sell or barter any dental degree
16 or any license or transcript made or purporting to be made pursuant
17 to the laws regulating the license and registration of dentists.

18 (b) Purchases or procures by barter any such diploma, license
19 or transcript with intent that the same shall be used in evidence of
20 the holder's qualification to practice dentistry, or in fraud of the
21 laws regulating such practice.

22 (c) With fraudulent intent, makes or attempts to make,
23 counterfeits or alters in a material regard any such diploma,
24 certificate or transcript.

25 (d) Uses, attempts or causes to be used, any such diploma,
26 certificate or transcript which has been purchased, fraudulently
27 issued, counterfeited or materially altered, either as a license to
28 practice dentistry, or in order to procure registration as a dentist.

29 (e) In an affidavit, required of an applicant for examination,
30 license or registration under this chapter, willfully makes a false
31 statement in a material regard.

32 (f) Practices dentistry or offers to practice dentistry as it is
33 defined in this chapter, either without a license, or when his license
34 has been revoked or suspended.

35 (g) Under any false, assumed or fictitious name, either as an
36 individual, firm, corporation or otherwise, or any name other than
37 the name under which he is licensed, practices, advertises or in
38 any other manner indicates that he is practicing or will practice
39 dentistry, except such name as is specified in a valid permit issued
40 pursuant to Section 1701.5.

1 *SEC. 9. Section 1701.1 of the Business and Professions Code*
2 *is amended to read:*

3 1701.1. (a) Notwithstanding Sections 1700 and 1701, a person
4 who willfully, under circumstances or conditions that cause or
5 create risk of bodily harm, serious physical or mental illness, or
6 death, practices or attempts to practice, or advertises or holds
7 himself or herself out as practicing dentistry without having at the
8 time of so doing a valid, unrevoked, and unsuspended certificate,
9 license, registration, or permit as provided in this chapter, or
10 without being authorized to perform that act pursuant to a
11 certificate, license, registration, or permit obtained in accordance
12 with some other provision of law, is guilty of a public offense,
13 punishable by a fine not exceeding ten thousand dollars (\$10,000),
14 ~~by imprisonment in the state prison pursuant to subdivision (h) of~~
15 *Section 1170 of the Penal Code*, by imprisonment in a county jail
16 not exceeding one year, or by both the fine and either
17 imprisonment.

18 (b) A person who conspires with or aids and abets another to
19 commit any act described in subdivision (a) is guilty of a public
20 offense and subject to the punishment described in subdivision
21 (a).

22 (c) The remedy provided in this section shall not preclude any
23 other remedy provided by law.

24 *SEC. 10. Section 1960 of the Business and Professions Code*
25 *is amended to read:*

26 1960. For the first offense, a person is guilty of a misdemeanor
27 and shall be punishable by a fine of not less than two hundred
28 dollars (\$200) nor more than three thousand dollars (\$3,000), or
29 by imprisonment in a county jail for not to exceed six months, or
30 by both that fine and imprisonment, and for the second or a
31 subsequent offense is guilty of a felony and upon conviction thereof
32 shall be punished by a fine of not less than two thousand dollars
33 (\$2,000) nor more than six thousand dollars (\$6,000), or by
34 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
35 *Section 1170 of the Penal Code*, or by both that fine and
36 imprisonment, who does any of the following:

37 (a) Sells or barter or offers to sell or barter a dental hygiene
38 degree or transcript or a license issued under, or purporting to be
39 issued under, laws regulating licensure of registered dental

1 hygienists, registered dental hygienists in alternative practice, or
2 registered dental hygienists in extended functions.

3 (b) Purchases or procures by barter a diploma, license, or
4 transcript with intent that it shall be used as evidence of the holder's
5 qualification to practice dental hygiene, or in fraud of the laws
6 regulating the practice of dental hygiene.

7 (c) With fraudulent intent, makes, attempts to make, counterfeits,
8 or materially alters a diploma, certificate, or transcript.

9 (d) Uses, or attempts or causes to be used, any diploma,
10 certificate, or transcript that has been purchased, fraudulently
11 issued, counterfeited, or materially altered or in order to procure
12 licensure as a registered dental hygienist, registered dental hygienist
13 in alternative practice, or registered dental hygienist in extended
14 functions.

15 (e) In an affidavit required of an applicant for an examination
16 or license under this article, willfully makes a false statement in a
17 material regard.

18 (f) Practices dental hygiene or offers to practice dental hygiene,
19 as defined in this article, either without a license, or when his or
20 her license has been revoked or suspended.

21 (g) Under any false, assumed or fictitious name, either as an
22 individual, firm, corporation or otherwise, or any name other than
23 the name under which he or she is licensed, practices, advertises,
24 or in any other manner indicates that he or she practices or will
25 practice dental hygiene, except a name specified in a valid permit
26 issued pursuant to Section 1962.

27 *SEC. 11. Section 2052 of the Business and Professions Code*
28 *is amended to read:*

29 2052. (a) Notwithstanding Section 146, any person who
30 practices or attempts to practice, or who advertises or holds himself
31 or herself out as practicing, any system or mode of treating the
32 sick or afflicted in this state, or who diagnoses, treats, operates
33 for, or prescribes for any ailment, blemish, deformity, disease,
34 disfigurement, disorder, injury, or other physical or mental
35 condition of any person, without having at the time of so doing a
36 valid, unrevoked, or unsuspended certificate as provided in this
37 chapter or without being authorized to perform the act pursuant to
38 a certificate obtained in accordance with some other provision of
39 law is guilty of a public offense, punishable by a fine not exceeding
40 ten thousand dollars (\$10,000), by imprisonment in the state prison

1 pursuant to subdivision (h) of Section 1170 of the Penal Code, by
2 imprisonment in a county jail not exceeding one year, or by both
3 the fine and either imprisonment.

4 (b) Any person who conspires with or aids or abets another to
5 commit any act described in subdivision (a) is guilty of a public
6 offense, subject to the punishment described in that subdivision.

7 (c) The remedy provided in this section shall not preclude any
8 other remedy provided by law.

9 SEC. 12. Section 2315 of the Business and Professions Code
10 is amended to read:

11 2315. (a) Except as otherwise provided by law, any person
12 found guilty of a misdemeanor for a violation of this chapter shall
13 be punished by a fine of not less than two hundred dollars (\$200)
14 nor more than one thousand two hundred dollars (\$1,200) or by
15 imprisonment for a term of not less than 60 days nor more than
16 180 days, or by both such fine and imprisonment.

17 (b) A violation of Section 2273 is a public offense and is
18 punishable upon a first conviction by imprisonment in ~~the a~~ county
19 jail for not more than one year. A second or subsequent conviction
20 is punishable by imprisonment in ~~the a~~ county jail for not more
21 than one year or by imprisonment in ~~the state prison~~ pursuant to
22 subdivision (h) of Section 1170 of the Penal Code for 16 months
23 or 2 or 3 years, or by a fine not exceeding ten thousand dollars
24 (\$10,000) or by both the fine and imprisonment.

25 SEC. 13. Section 4324 of the Business and Professions Code
26 is amended to read:

27 4324. (a) Every person who signs the name of another, or of
28 a fictitious person, or falsely makes, alters, forges, utters, publishes,
29 passes, or attempts to pass, as genuine, any prescription for any
30 drugs is guilty of forgery and upon conviction thereof shall be
31 punished by imprisonment in ~~the state prison~~ pursuant to
32 subdivision (h) of Section 1170 of the Penal Code, or by
33 imprisonment in ~~the a~~ county jail for not more than one year.

34 (b) Every person who has in his or her possession any drugs
35 secured by a forged prescription shall be punished by imprisonment
36 in ~~the state prison~~ pursuant to subdivision (h) of Section 1170 of
37 the Penal Code, or by imprisonment in the county jail for not more
38 than one year.

39 SEC. 14. Section 5536.5 of the Business and Professions Code
40 is amended to read:

1 5536.5. Any person who violates subdivision (a) of Section
2 5536 in connection with the offer or performance of architectural
3 services for the repair of damage to a residential or nonresidential
4 structure caused by a natural disaster for which a state of
5 emergency is proclaimed by the Governor pursuant to Section
6 8625 of the Government Code, or for which an emergency or major
7 disaster is declared by the President of the United States, shall be
8 punished by a fine up to ten thousand dollars (\$10,000), or by
9 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
10 ~~Section 1170 of the Penal Code~~ for 16 months, or for two or three
11 years, or by both the fine and imprisonment, or by a fine up to one
12 thousand dollars (\$1,000), or by imprisonment ~~in the~~ a county jail
13 not exceeding one year, or by both the fine and imprisonment.

14 *SEC. 15. Section 6126 of the Business and Professions Code*
15 *is amended to read:*

16 6126. (a) Any person advertising or holding himself or herself
17 out as practicing or entitled to practice law or otherwise practicing
18 law who is not an active member of the State Bar, or otherwise
19 authorized pursuant to statute or court rule to practice law in this
20 state at the time of doing so, is guilty of a misdemeanor punishable
21 by up to one year in a county jail or by a fine of up to one thousand
22 dollars (\$1,000), or by both that fine and imprisonment. Upon a
23 second or subsequent conviction, the person shall be confined in
24 a county jail for not less than 90 days, except in an unusual case
25 where the interests of justice would be served by imposition of a
26 lesser sentence or a fine. If the court imposes only a fine or a
27 sentence of less than 90 days for a second or subsequent conviction
28 under this subdivision, the court shall state the reasons for its
29 sentencing choice on the record.

30 (b) Any person who has been involuntarily enrolled as an
31 inactive member of the State Bar, or has been suspended from
32 membership from the State Bar, or has been disbarred, or has
33 resigned from the State Bar with charges pending, and thereafter
34 practices or attempts to practice law, advertises or holds himself
35 or herself out as practicing or otherwise entitled to practice law,
36 is guilty of a crime punishable by imprisonment ~~in the state prison~~
37 *pursuant to subdivision (h) of Section 1170 of the Penal Code or*
38 *in a county jail for a period not to exceed six months.* However,
39 any person who has been involuntarily enrolled as an inactive
40 member of the State Bar pursuant to paragraph (1) of subdivision

1 (e) of Section 6007 and who knowingly thereafter practices or
2 attempts to practice law, or advertises or holds himself or herself
3 out as practicing or otherwise entitled to practice law, is guilty of
4 a crime punishable by imprisonment ~~in the state prison~~ pursuant
5 to subdivision (h) of Section 1170 of the Penal Code or in a county
6 jail for a period not to exceed six months.

7 (c) The willful failure of a member of the State Bar, or one who
8 has resigned or been disbarred, to comply with an order of the
9 Supreme Court to comply with Rule 9.20 of the California Rules
10 of Court, constitutes a crime punishable by imprisonment ~~in the~~
11 ~~state prison~~ pursuant to subdivision (h) of Section 1170 of the
12 Penal Code or in a county jail for a period not to exceed six
13 months.

14 (d) The penalties provided in this section are cumulative to each
15 other and to any other remedies or penalties provided by law.

16 SEC. 16. Section 6153 of the Business and Professions Code
17 is amended to read:

18 6153. Any person, firm, partnership, association, or corporation
19 violating subdivision (a) of Section 6152 is punishable, upon a
20 first conviction, by imprisonment in a county jail for not more than
21 one year or by a fine not exceeding fifteen thousand dollars
22 (\$15,000), or by both that imprisonment and fine. Upon a second
23 or subsequent conviction, a person, firm, partnership, association,
24 or corporation is punishable by imprisonment in a county jail for
25 not more than one year, or by imprisonment ~~in the state prison~~
26 pursuant to subdivision (h) of Section 1170 of the Penal Code for
27 two, three, or four years, or by a fine not exceeding fifteen thousand
28 dollars (\$15,000), or by both that imprisonment and fine.

29 Any person employed either as an officer, director, trustee, clerk,
30 servant or agent of this state or of any county or other municipal
31 corporation or subdivision thereof, who is found guilty of violating
32 any of the provisions of this article, shall forfeit the right to his
33 office and employment in addition to any other penalty provided
34 in this article.

35 SEC. 17. Section 6788 of the Business and Professions Code
36 is amended to read:

37 6788. Any person who violates any provision of subdivisions
38 (a) to (i), inclusive, of Section 6787 in connection with the offer
39 or performance of engineering services for the repair of damage
40 to a residential or nonresidential structure caused by a disaster for

1 which a state of emergency is proclaimed by the Governor pursuant
2 to Section 8625 of the Government Code, or for which an
3 emergency or major disaster is declared by the President of the
4 United States, shall be punished by a fine up to ten thousand dollars
5 (\$10,000), or by imprisonment ~~in the state prison pursuant to~~
6 *subdivision (h) of Section 1170 of the Penal Code* for 16 months,
7 or for two or three years, or by both the fine and imprisonment, or
8 by a fine up to one thousand dollars (\$1,000), or by imprisonment
9 ~~in the a county jail~~ not exceeding one year, or by both the fine and
10 imprisonment.

11 *SEC. 18. Section 7028.16 of the Business and Professions Code*
12 *is amended to read:*

13 7028.16. A person who engages in the business or acts in the
14 capacity of a contractor, without having a license therefor, in
15 connection with the offer or performance of repairs to a residential
16 or nonresidential structure for damage caused by a natural disaster
17 for which a state of emergency is proclaimed by the Governor
18 pursuant to Section 8625 of the Government Code, or for which
19 an emergency or major disaster is declared by the President of the
20 United States, shall be punished by a fine up to ten thousand dollars
21 (\$10,000), or by imprisonment ~~in the state prison pursuant to~~
22 *subdivision (h) of Section 1170 of the Penal Code* for 16 months,
23 or for two or three years, or by both that fine and imprisonment,
24 or by a fine up to one thousand dollars (\$1,000), or by
25 imprisonment ~~in the a county jail~~ not exceeding one year, or by
26 both that fine and imprisonment. In addition, a person who utilized
27 the services of the unlicensed contractor is a victim of crime
28 regardless of whether that person had knowledge that the contractor
29 was unlicensed.

30 *SEC. 19. Section 7739 of the Business and Professions Code*
31 *is amended to read:*

32 7739. Any person willfully violating the provisions of this
33 article or any of them shall be punishable either by imprisonment
34 ~~in the a county jail~~ for a period not exceeding six months, or by
35 fine not exceeding five hundred dollars (\$500), or by both
36 imprisonment and fine, or by imprisonment ~~in the state prison~~
37 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
38 16 months, or two or three years. If the violator is a funeral
39 establishment licensee, he or she shall also be subject to

1 disciplinary action as provided in Article 6 (commencing with
2 Section 7686).

3 *SEC. 20. Section 10238.6 of the Business and Professions Code*
4 *is amended to read:*

5 10238.6. Any person who does any of the following acts is
6 guilty of a public offense punishable by a fine not exceeding ten
7 thousand dollars (\$10,000) or by imprisonment ~~in the state prison~~
8 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
9 in a county jail not exceeding one (1) year or by both ~~such that~~
10 fine and imprisonment.

11 (a) In any application to the commissioner or in any proceeding
12 before him, or in any examination, audit or investigation made by
13 him or on his authority, knowingly makes any false statement or
14 representation, or, with knowledge of its falsity, files or causes to
15 be filed in the office of the commissioner any false statement or
16 representation in a required report.

17 (b) Issues, circulates or publishes, or causes to be issued,
18 circulated or published any advertisement, pamphlet, prospectus
19 or circular concerning any real property security which contains
20 any statement that is false or misleading, or otherwise likely to
21 deceive a reader thereof, with knowledge that it contains such
22 false, misleading or deceptive statement.

23 (c) In any respect willfully violates or fails to comply with any
24 provision of this article, or willfully violates or fails, omits or
25 neglects to obey, observe or comply with any order, decision,
26 demand, requirement or permit, or any part or provisions thereof,
27 of the commissioner under this article.

28 (d) With one or more other persons, conspires to violate any
29 permit or order issued by the commissioner of any provision of
30 this article.

31 *SEC. 21. Section 11020 of the Business and Professions Code*
32 *is amended to read:*

33 11020. (a) It shall be unlawful for any person to make, issue,
34 publish, deliver, or transfer as true and genuine any public report
35 which is forged, altered, false, or counterfeit, knowing it to be
36 forged, altered, false, or counterfeit or to cause to be made or
37 participate in the making, issuance, delivery, transfer, or publication
38 of a public report with knowledge that it is forged, altered, false,
39 or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or in the a~~ county jail not exceeding one year, or by both that fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

SEC. 22. Section 11023 of the Business and Professions Code is amended to read:

11023. Any person who violates Section 11010, 11010.1, 11010.8, 11013.1, 11013.2, 11013.4, 11018.2, 11018.7, 11018.9, 11018.10, 11018.11, 11019, or 11022 is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a~~ county jail not exceeding one year, or by both that fine and imprisonment.

SEC. 23. Section 11286 of the Business and Professions Code is amended to read:

11286. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report that is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, by~~ imprisonment ~~in the a~~ county jail not exceeding one year, or by both the fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

SEC. 24. Section 11287 of the Business and Professions Code is amended to read:

11287. Any person who violates Section 11226, 11227, 11234, 11244, 11245, or 11283, is guilty of a public offense punishable

1 by a fine not to exceed ten thousand dollars (\$10,000), by
2 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
3 *Section 1170 of the Penal Code* or in a county jail not exceeding
4 one year, or by both the fine and imprisonment.

5 *SEC. 25. Section 11320 of the Business and Professions Code*
6 *is amended to read:*

7 11320. No person shall engage in federally related real estate
8 appraisal activity governed by this part or assume or use the title
9 of or any title designation or abbreviation as a licensed appraiser
10 in this state without first obtaining a license as defined in Section
11 11302. Any person who willfully violates this provision is guilty
12 of a public offense punishable by imprisonment ~~in the state prison~~
13 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
14 in a county jail for not more than one year, or by a fine not
15 exceeding ten thousand dollars (\$10,000), or by both the
16 imprisonment and fine. The possession of a license issued pursuant
17 to this part does not preempt the application of other statutes
18 including the requirement for specialized training or licensure
19 pursuant to Article 3 (commencing with Section 750) of Chapter
20 2.5 of Division 1 of the Public Resources Code.

21 *SEC. 26. Section 16755 of the Business and Professions Code*
22 *is amended to read:*

23 16755. (a) Any violation of this chapter is a conspiracy against
24 trade, and any person who engages in any such conspiracy or takes
25 part therein, or aids or advises in its commission, or who as
26 principal, manager, director, agent, servant or employee, or in any
27 other capacity, knowingly carries out any of the stipulations,
28 purposes, prices, rates, or furnishes any information to assist in
29 carrying out such purposes, or orders thereunder or in pursuance
30 thereof, is punishable, as follows:

31 (1) If the violator is a corporation, by a fine of not more than
32 one million dollars (\$1,000,000) or the applicable amount under
33 paragraph (3), whichever is greater.

34 (2) If the violator is an individual, by imprisonment ~~in a state~~
35 *prison pursuant to subdivision (h) of Section 1170 of the Penal*
36 *Code* for one, two, or three years, by imprisonment for not more
37 than one year in a county jail, by a fine of not more than the greater
38 of two hundred fifty thousand dollars (\$250,000), a fine of the
39 applicable amount under paragraph (3), or by both a fine and
40 imprisonment.

1 (3) If any person derives pecuniary gain from a violation of this
2 chapter, or the violation results in pecuniary loss to a person other
3 than the violator, the violator may be fined not more than an
4 amount equal to the amount of the gross gain multiplied by two
5 or an amount equal to the amount of the gross loss multiplied by
6 two, whichever is applicable.

7 (b) Any action pursuant to this section may be commenced at
8 any time within four years after the commission of the last act
9 comprising a part of any violation. No cause of action barred under
10 existing law on the effective date of the amendment of this section
11 at the 1977–78 Regular Session of the Legislature shall be revived
12 by such amendment.

13 (c) Subject to Section 13521 of the Penal Code, all moneys
14 received by any court in payment of any fine or civil penalty
15 imposed pursuant to this section shall, as soon as practicable after
16 receipt thereof, be deposited with the county treasurer of the county
17 in which the court is situated. Amounts so deposited shall be paid
18 as soon as practicable as follows: 100 percent to the Treasurer by
19 warrant of the county auditor drawn upon the requisition of the
20 clerk or judge of said court to be deposited in the State Treasury
21 on order of the Controller if the moneys received resulted from an
22 action initiated and prosecuted by the Attorney General. If the
23 action was initiated and prosecuted by a district attorney then 100
24 percent shall be paid as soon as practicable to the treasurer of the
25 county in which the prosecution is conducted. If the action was
26 initiated and prosecuted jointly by the Attorney General and a
27 district attorney or jointly by more than one district attorney, such
28 amounts shall be paid to the State Treasurer and to the treasurer(s)
29 of the county or counties participating in the prosecution in a
30 proportion agreed upon by the agencies jointly prosecuting such
31 case and as approved by the court.

32 *SEC. 27. Section 17511.9 of the Business and Professions Code*
33 *is amended to read:*

34 17511.9. Except as provided in Section 17511.8, any person,
35 including, but not limited to, the seller, a salesperson, agent or
36 representative of the seller, or an independent contractor, who
37 willfully violates any provision of this article or who directly or
38 indirectly employs any device, scheme, or artifice to deceive in
39 connection with the offer or sale by any telephonic seller, or who
40 willfully, directly, or indirectly, engages in any act, practice, or

1 course of business which operates or would operate as a fraud or
2 deceit upon any person in connection with a sale by any telephonic
3 seller shall, upon conviction, be punished as follows:

4 (a) By a fine not exceeding ten thousand dollars (\$10,000) for
5 each unlawful transaction.

6 (b) By imprisonment ~~in the state prison~~ *pursuant to subdivision*
7 *(h) of Section 1170 of the Penal Code*, or by imprisonment in ~~the~~
8 *a* county jail for not more than one year.

9 (c) By both the fine and imprisonment specified in subdivisions
10 (a) and (b).

11 *SEC. 28. Section 17550.19 of the Business and Professions*
12 *Code is amended to read:*

13 17550.19. In addition to any civil penalties provided in this
14 division, violation of this article is punishable as follows:

15 (a) As a misdemeanor by a fine of not more than ten thousand
16 dollars (\$10,000), by imprisonment in a county jail for not more
17 than one year, or by both that fine and imprisonment for each
18 violation.

19 (b) In addition, any violation of Section 17550.14 or subdivision
20 (b) or (c) of Section 17550.15 where money or real or personal
21 property received or obtained by a seller of travel for transportation
22 or travel services from any and all persons aggregates two thousand
23 three hundred fifty dollars (\$2,350) or more in any consecutive
24 12-month period, or the payment or payments by or on behalf of
25 any one passenger exceeds in the aggregate nine hundred fifty
26 dollars (\$950) in any 12-month period, is punishable either as a
27 misdemeanor or as a felony by imprisonment ~~in the state prison~~
28 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
29 16 months, or two or three years, by a fine of not more than
30 twenty-five thousand dollars (\$25,000), or by both that fine and
31 imprisonment for each violation.

32 (c) In addition, any intentional use for any purpose of a false
33 seller of travel registration number, with intent to defraud, by an
34 unregistered seller of travel is punishable as a misdemeanor or
35 felony as provided in this section.

36 (d) Any violation of Section 17550.15 shall be a misdemeanor
37 and shall be punished as provided in this section. Every act in
38 violation of Section 17550.15 may be prosecuted as a separate and
39 distinct violation and consecutive sentences may be imposed for
40 each violation.

(e) Sellers of travel shall also comply with Sections 17537, 17537.1, and 17537.2 of the Business and Professions Code and all other applicable laws. This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state that applies or may apply to any transaction.

SEC. 29. Section 22430 of the Business and Professions Code is amended to read:

22430. (a) No deceptive identification document shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported, or imported or offered to be imported into this state unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) As used in this section, “deceptive identification document” means any document not issued by a governmental agency of this state, another state, or the federal government, which purports to be, or which might deceive an ordinary reasonable person into believing that it is, a document issued by such an agency, including, but not limited to, a driver’s license, identification card, birth certificate, passport, or social security card.

(c) Any person who violates or proposes to violate this section may be enjoined by any court of competent jurisdiction. Actions for injunction under this section may be prosecuted by the Attorney General or any district attorney in this state in the name of the people of the State of California upon their own complaint or upon the complaint of any person.

(d) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that the deceptive identification document will be used for fraudulent purposes is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

SEC. 30. Section 25618 of the Business and Professions Code is amended to read:

25618. Every person convicted of a felony for a violation of any of the provisions of this division for which another punishment is not specifically provided for in this division shall be punished by a fine of not more than ten thousand dollars (\$10,000), imprisonment in a county jail for not more than one year, ~~imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by both that fine and imprisonment.

SEC. 31. Section 892 of the Civil Code is amended to read:

892. (a) Any person who engages in multiple acts of rent skimming is subject to criminal prosecution. Each act of rent skimming comprising the multiple acts of rent skimming shall be separately alleged. A person found guilty of five acts shall be punished by ~~imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ or by imprisonment in ~~the~~ a county jail for not more than one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment. A person found guilty of additional acts shall be separately punished for each additional act by ~~imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ or by imprisonment in ~~the~~ a county jail for not more than one year, by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) If a defendant has been once previously convicted of a violation of subdivision (a), any subsequent knowing and willful act of rent skimming shall be punishable by ~~imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ or by imprisonment in ~~the~~ a county jail for not more than one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(c) A prosecution for a violation of this section shall be commenced within three years after the date of the acquisition of the last parcel of property that was the subject of the conduct for which the defendant is prosecuted.

(d) The penalties under this section are in addition to any other remedies or penalties provided by law for the conduct proscribed by this section.

SEC. 32. Section 1695.8 of the Civil Code is amended to read:

1695.8. Any equity purchaser who violates any subdivision of Section 1695.6 or who engages in any practice which would

1 operate as a fraud or deceit upon an equity seller shall, upon
2 conviction, be punished by a fine of not more than twenty-five
3 thousand dollars (\$25,000), by imprisonment in the county jail for
4 not more than one year, or ~~in the state prison pursuant to~~
5 *subdivision (h) of Section 1170 of the Penal Code*, or by both that
6 fine and imprisonment for each violation.

7 *SEC. 33. Section 1812.125 of the Civil Code is amended to*
8 *read:*

9 1812.125. (a) Any person who violates subdivision (b) or (c)
10 of Section 1812.116 shall, upon conviction, be fined not more than
11 ten thousand dollars (\$10,000) for each violation, or imprisoned
12 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
13 *the Penal Code*, or imprisoned in a county jail for not more than
14 one year, or be punished by both ~~such~~ *that* fine and imprisonment.

15 (b) Any person who violates any other provision of this title
16 shall be guilty of a misdemeanor.

17 *SEC. 34. Section 1812.217 of the Civil Code is amended to*
18 *read:*

19 1812.217. Any person, including, but not limited to, the seller,
20 a salesman, agent or representative of the seller or an independent
21 contractor who attempts to sell or lease or sells or leases a seller
22 assisted marketing plan, who willfully violates any provision of
23 this title or employs, directly or indirectly, any device, scheme or
24 artifice to deceive in connection with the offer or sale of any seller
25 assisted marketing plan, or willfully engages, directly or indirectly,
26 in any act, practice or course of business which operates or would
27 operate as a fraud or deceit upon any person in connection with
28 the offer, purchase, lease or sale of any seller assisted marketing
29 plan shall, upon conviction, be fined not more than ten thousand
30 dollars (\$10,000) for each unlawful transaction, or imprisoned ~~in~~
31 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
32 *Penal Code*, or imprisoned in a county jail for not more than one
33 year, or be punished by both ~~such~~ *that* fine and imprisonment.

34 *SEC. 35. Section 2945.7 of the Civil Code is amended to read:*

35 2945.7. Any person who commits any violation described in
36 Section 2945.4 shall be punished by a fine of not more than ten
37 thousand dollars (\$10,000), by imprisonment in the county jail for
38 not more than one year, or ~~in the state prison pursuant to~~
39 *subdivision (h) of Section 1170 of the Penal Code*, or by both that

1 fine and imprisonment for each violation. These penalties are
2 cumulative to any other remedies or penalties provided by law.

3 *SEC. 36. Section 2985.2 of the Civil Code is amended to read:*

4 2985.2. Any person, or the assignee of such person, who sells
5 a parcel of land under a sales contract which is not recorded and
6 who thereafter causes an encumbrance or encumbrances not
7 consented to in writing by the parties upon such property in an
8 amount which, together with existing encumbrances thereon
9 exceeds the amount then due under the contract, or under which
10 the aggregate amount of any periodic payments exceeds the
11 periodic payments due on the contract, excluding any pro rata
12 amount for insurance and taxes, shall be guilty of a public offense
13 punishable by a fine not exceeding ten thousand dollars (\$10,000),
14 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
15 *of Section 1170 of the Penal Code*, or ~~in the~~ a county jail not
16 exceeding one year, or by both ~~such~~ that fine and imprisonment.

17 *SEC. 37. Section 2985.3 of the Civil Code is amended to read:*

18 2985.3. Every seller of improved or unimproved real property
19 under a real property sales contract, or his assignee, who knowingly
20 receives an installment payment from the buyer under a real
21 property sales contract at a time when there is then due any
22 payment by the seller, or his assignee, on an obligation secured
23 by an encumbrance on the property subject to the real property
24 sales contract, and who appropriates such payment received from
25 the buyer to a use other than payment of the amount then due on
26 the seller's or assignee's obligation, except to the extent the
27 payment received from the buyer exceeds the amount due from
28 the seller or assignee, is guilty of a public offense punishable by
29 a fine not exceeding ten thousand dollars (\$10,000), or by
30 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
31 *Section 1170 of the Penal Code*, or ~~in the~~ a county jail not
32 exceeding one year, or by both ~~such~~ that fine and imprisonment.

33 *SEC. 38. Section 2255 of the Corporations Code is amended*
34 *to read:*

35 2255. (a) Every director, officer or agent of any corporation,
36 domestic or foreign, who knowingly receives or acquires
37 possession of any property of the corporation, otherwise than in
38 payment of a just demand, and, with intent to defraud, omits to
39 make, or to cause or direct to be made, a full and true entry thereof

1 in the books or accounts of the corporation is guilty of a public
2 offense.

3 (b) Every director, officer, agent or shareholder of any
4 corporation, domestic or foreign, who, with intent to defraud,
5 destroys, alters, mutilates or falsifies any of the books, papers,
6 writings or securities belonging to the corporation or makes or
7 concurs in omitting to make any material entry in any book of
8 accounts or other record or document kept by the corporation is
9 guilty of a public offense.

10 (c) Each public offense specified in this section is punishable
11 by imprisonment in a state prison pursuant to subdivision (h) of
12 Section 1170 of the Penal Code, or by imprisonment in a county
13 jail for not exceeding one year, or a fine not exceeding one
14 thousand dollars (\$1,000), or by both ~~such~~ that fine and
15 imprisonment.

16 SEC. 39. Section 2256 of the Corporations Code is amended
17 to read:

18 2256. Every officer, agent or clerk of any corporation, domestic
19 or foreign, or any person proposing to organize such a corporation
20 or to increase the capital stock of any such corporation, who
21 knowingly exhibits any false, forged or altered book, paper,
22 voucher, security or other instrument of evidence to any public
23 officer or board authorized by law to examine the organization of
24 such corporation or to investigate its affairs or to allow an increase
25 of its capital, with intent to deceive such officer or board in respect
26 thereto, is punishable by imprisonment in a state prison pursuant
27 to subdivision (h) of Section 1170 of the Penal Code, or by
28 imprisonment in a county jail for not exceeding one year.

29 SEC. 40. Section 6811 of the Corporations Code is amended
30 to read:

31 6811. Any director of any corporation who concurs in any vote
32 or act of the directors of the corporation or any of them, knowingly
33 and with dishonest or fraudulent purpose, to make any distribution
34 with the design of defrauding creditors, members, or the
35 corporation, is guilty of a crime. Each such crime is punishable
36 by imprisonment in a state prison pursuant to subdivision (h) of
37 Section 1170 of the Penal Code or by a fine of not more than one
38 thousand dollars (\$1,000) or imprisonment in a county jail for not
39 more than one year, or both ~~such~~ that fine and imprisonment.

1 *SEC. 41. Section 6814 of the Corporations Code is amended*
2 *to read:*

3 6814. Every director, officer or agent of any corporation, or
4 any person proposing to organize such a corporation, who
5 knowingly exhibits any false, forged or altered book, paper,
6 voucher, security or other instrument of evidence to any public
7 officer or board authorized by law to examine the organization of
8 such corporation or to investigate its affairs, with intent to deceive
9 such officer or board in respect thereto, is punishable by
10 imprisonment ~~in a state prison pursuant to subdivision (h) of~~
11 *Section 1170 of the Penal Code*, or by imprisonment in a county
12 jail for not more than one year.

13 *SEC. 42. Section 8812 of the Corporations Code is amended*
14 *to read:*

15 8812. Any director of any corporation who concurs in any vote
16 or act of the directors of the corporation or any of them, knowingly
17 and with dishonest or fraudulent purpose, to make any distribution
18 of assets, except in the case and in the manner allowed by this part,
19 either with the design of defrauding creditors or members or of
20 giving a false appearance to the value of the membership and
21 thereby defrauding purchasers is guilty of a crime. Each such crime
22 is punishable by imprisonment ~~in a state prison pursuant to~~
23 *subdivision (h) of Section 1170 of the Penal Code*, or by a fine of
24 not more than one thousand dollars (\$1,000) or imprisonment in
25 a county jail for not more than one year, or by both ~~such~~ *that* fine
26 and imprisonment.

27 *SEC. 43. Section 8815 of the Corporations Code is amended*
28 *to read:*

29 8815. Every director, officer or agent of any corporation, or
30 any person proposing to organize such a corporation who
31 knowingly exhibits any false, forged or altered book, paper,
32 voucher, security or other instrument of evidence to any public
33 officer or board authorized by law to examine the organization of
34 such corporation or to investigate its affairs, with intent to deceive
35 such officer or board in respect thereto, is punishable by
36 imprisonment ~~in a state prison pursuant to subdivision (h) of~~
37 *Section 1170 of the Penal Code*, or by imprisonment in a county
38 jail for not exceeding one year.

39 *SEC. 44. Section 12672 of the Corporations Code is amended*
40 *to read:*

1 12672. Any director of any corporation who concurs in any
2 vote or act of the directors of the corporation or any of them,
3 knowingly and with dishonest or fraudulent purpose, to make any
4 distribution of assets, except in the case and in the manner allowed
5 by this part, either with the design of defrauding creditors or
6 members or of giving a false appearance to the value of the
7 membership and thereby defrauding purchasers is guilty of a crime.
8 Each such crime is punishable by imprisonment ~~in a state prison~~
9 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
10 by a fine of not more than one thousand dollars (\$1,000), or
11 imprisonment in a county jail for not more than one year, or by
12 both ~~such~~ *that* fine and imprisonment.

13 *SEC. 45. Section 12675 of the Corporations Code is amended*
14 *to read:*

15 12675. Every director, officer or agent of any corporation, or
16 any person proposing to organize such a corporation who
17 knowingly exhibits any false, forged, or altered book, paper,
18 voucher, security, or other instrument of evidence to any public
19 officer or board authorized by law to examine the organization of
20 such corporation or to investigate its affairs, with intent to deceive
21 such officer or board in respect thereto, is punishable by
22 imprisonment ~~in a state prison pursuant to subdivision (h) of~~
23 *Section 1170 of the Penal Code*, or by imprisonment in a county
24 jail for not exceeding one year.

25 *SEC. 46. Section 22002 of the Corporations Code is amended*
26 *to read:*

27 22002. (a) Every director, officer, or agent of any joint stock
28 association, who knowingly receives or possesses himself of any
29 property of the association, otherwise than in payment of a just
30 demand, and, with intent to defraud, omits to make, or to cause or
31 direct to be made, a full and true entry thereof in the books or
32 accounts of the association, is guilty of a public offense.

33 (b) Every director, officer, agent, or member of any joint stock
34 association who, with intent to defraud, destroys, alters, mutilates,
35 or falsifies any of the books, papers, writings, or securities
36 belonging to the association, or makes or concurs in making any
37 false entries, or omits or concurs in omitting to make any material
38 entry in any book of accounts or other record or document kept
39 by the association, is guilty of a public offense.

1 (c) Each public offense specified in this section is punishable
2 by imprisonment ~~in a state prison pursuant to subdivision (h) of~~
3 *Section 1170 of the Penal Code*, or by imprisonment in a county
4 jail not exceeding one year, or a fine not exceeding one thousand
5 dollars (\$1,000), or by both ~~such that~~ fine and imprisonment.

6 *SEC. 47. Section 25540 of the Corporations Code is amended*
7 *to read:*

8 25540. (a) Except as provided for in subdivision (b), any
9 person who willfully violates any provision of this division, or
10 who willfully violates any rule or order under this division, shall
11 upon conviction be fined not more than one million dollars
12 (\$1,000,000), or imprisoned ~~in the state prison pursuant to~~
13 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
14 jail for not more than one year, or be punished by both that fine
15 and imprisonment; but no person may be imprisoned for the
16 violation of any rule or order if he or she proves that he or she had
17 no knowledge of the rule or order.

18 (b) Any person who willfully violates Section 25400, 25401,
19 or 25402, or who willfully violates any rule or order under this
20 division adopted pursuant to those provisions, shall upon conviction
21 be fined not more than ten million dollars (\$10,000,000), or
22 imprisoned ~~in the state prison pursuant to subdivision (h) of Section~~
23 *1170 of the Penal Code* for two, three, or five years, or be punished
24 by both that fine and imprisonment.

25 (c) Any issuer, as defined in Section 2 of the Sarbanes-Oxley
26 Act of 2002 (Public Law 107-204), who willfully violates Section
27 25400, 25401, or 25402, or who willfully violates any rule or order
28 under this division adopted pursuant to those provisions, shall
29 upon conviction be fined not more than twenty-five million dollars
30 (\$25,000,000), or imprisoned ~~in the state prison pursuant to~~
31 *subdivision (h) of Section 1170 of the Penal Code* for two, three,
32 or five years, or be punished by both that fine and imprisonment.

33 *SEC. 48. Section 25541 of the Corporations Code is amended*
34 *to read:*

35 25541. (a) Any person who willfully employs, directly or
36 indirectly, any device, scheme, or artifice to defraud in connection
37 with the offer, purchase, or sale of any security or willfully
38 engages, directly or indirectly, in any act, practice, or course of
39 business which operates or would operate as a fraud or deceit upon
40 any person in connection with the offer, purchase, or sale of any

1 security shall upon conviction be fined not more than ten million
2 dollars (\$10,000,000), or imprisoned ~~in the state prison pursuant~~
3 ~~to subdivision (h) of Section 1170 of the Penal Code~~ for two, three,
4 or five years, or be punished by both that fine and imprisonment.

5 (b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley
6 Act of 2002 (Public Law 107-204), who willfully violates
7 subdivision (a) shall upon conviction be fined not more than
8 twenty-five million dollars (\$25,000,000), or imprisoned ~~in the~~
9 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
10 ~~Penal Code~~ for two, three, or five years, or be punished by both
11 that fine and imprisonment.

12 *SEC. 49. Section 27202 of the Corporations Code is amended*
13 *to read:*

14 27202. Every individual who willfully violates Section 27101
15 is guilty of a public offense punishable by a fine not exceeding
16 two hundred fifty thousand dollars (\$250,000), or by imprisonment
17 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
18 ~~the Penal Code~~ for two, three, or four years, or by both fine and
19 imprisonment.

20 *SEC. 50. Section 28880 of the Corporations Code is amended*
21 *to read:*

22 28880. Any person who willfully violates any provision under
23 this chapter shall upon conviction be fined not more than two
24 hundred fifty thousand dollars (\$250,000) or be imprisoned ~~in the~~
25 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
26 ~~Penal Code~~, or in a county jail for not more than one year, or be
27 punished by both that fine and imprisonment.

28 *SEC. 51. Section 29102 of the Corporations Code is amended*
29 *to read:*

30 29102. The felonies specified in this chapter are punishable,
31 for each offense, if the offender is a corporation, by a fine of not
32 less than one thousand dollars (\$1,000) nor more than ten thousand
33 dollars (\$10,000) or, if the offender is not a corporation, by
34 imprisonment ~~in a state prison pursuant to subdivision (h) of~~
35 ~~Section 1170 of the Penal Code~~, or by a fine of not less than one
36 thousand dollars (\$1,000) nor more than ten thousand dollars
37 (\$10,000), or by both ~~such~~ that imprisonment and fine.

38 *SEC. 52. Section 29550 of the Corporations Code is amended*
39 *to read:*

1 29550. (a) Except as provided in subdivision (b), any person
2 who willfully violates any provision of this law, or who willfully
3 violates any rule or order under this law, shall upon conviction be
4 fined not more than two hundred fifty thousand dollars (\$250,000)
5 or imprisoned ~~in the state prison pursuant to subdivision (h) of~~
6 *Section 1170 of the Penal Code*, or in a county jail for not more
7 than one year, or be punished by both a fine and imprisonment;
8 but no person may be imprisoned for the violation of any rule or
9 order if that person proves that he or she had no knowledge of the
10 rule or order.

11 (b) Any person who willfully violates Section 29536 shall upon
12 conviction be fined not more than two hundred fifty thousand
13 dollars (\$250,000), or imprisoned ~~in the state prison pursuant to~~
14 *subdivision (h) of Section 1170 of the Penal Code* for two, three,
15 or four years, or be punished by both ~~a~~ *that* fine and imprisonment.

16 (c) One-half of the fines collected under this section shall be
17 paid to the State Corporations Fund to be used for the support of
18 this division. The remainder of the fines collected under this section
19 shall be paid to the state or local agency which brought the criminal
20 prosecution.

21 *SEC. 53. Section 31410 of the Corporations Code is amended*
22 *to read:*

23 31410. Any person who willfully violates any provision of this
24 law, or who willfully violates any rule or order under this law,
25 shall upon conviction be fined not more than one hundred thousand
26 dollars (\$100,000) or imprisoned ~~in the state prison pursuant to~~
27 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
28 jail for not more than one year, or be punished by both ~~that~~ fine
29 and imprisonment; but no person may be imprisoned for the
30 violation of any rule or order if he or she proves that he or she had
31 no knowledge of the rule or order.

32 *SEC. 54. Section 31411 of the Corporations Code is amended*
33 *to read:*

34 31411. Any person who willfully employs, directly or
35 indirectly, any device, scheme, or artifice to defraud in connection
36 with the offer or sale of any franchise or willfully engages, directly
37 or indirectly, in any act, practice, or course of business which
38 operates or would operate as a fraud or deceit upon any person in
39 connection with the offer, purchase, or sale of any franchise shall
40 upon conviction be fined not more than one hundred thousand

1 dollars (\$100,000) or imprisoned ~~in the state prison pursuant to~~
2 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
3 jail for not more than one year, or be punished by both that fine
4 and imprisonment.

5 *SEC. 55. Section 35301 of the Corporations Code is amended*
6 *to read:*

7 35301. Any officer or member of the board of directors, board
8 of trustees, executive committee, or other similar governing body
9 of a subversive organization who violates any provision of this
10 title, or permits or acquiesces in the violation of any provision of
11 this title by the organization is guilty of a felony punishable by
12 fine of not less than five hundred dollars (\$500) nor more than ten
13 thousand dollars (\$10,000), or by imprisonment ~~in a state prison~~
14 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
15 by both *that fine and imprisonment*.

16 *SEC. 56. Section 7054 of the Education Code is amended to*
17 *read:*

18 7054. (a) No school district or community college district
19 funds, services, supplies, or equipment shall be used for the purpose
20 of urging the support or defeat of any ballot measure or candidate,
21 including, but not limited to, any candidate for election to the
22 governing board of the district.

23 (b) Nothing in this section shall prohibit the use of any of the
24 public resources described in subdivision (a) to provide information
25 to the public about the possible effects of any bond issue or other
26 ballot measure if both of the following conditions are met:

27 (1) The informational activities are otherwise authorized by the
28 Constitution or laws of this state.

29 (2) The information provided constitutes a fair and impartial
30 presentation of relevant facts to aid the electorate in reaching an
31 informed judgment regarding the bond issue or ballot measure.

32 (c) A violation of this section shall be a misdemeanor or felony
33 punishable by imprisonment ~~in the a county jail not exceeding one~~
34 year or by a fine not exceeding one thousand dollars (\$1,000), or
35 by both, or imprisonment ~~in a state prison pursuant to subdivision~~
36 *(h) of Section 1170 of the Penal Code* for 16 months, or two or
37 three years.

38 *SEC. 57. Section 18002 of the Elections Code is amended to*
39 *read:*

1 18002. Every person charged with the performance of any duty
2 under any law of this state relating to elections, who willfully
3 neglects or refuses to perform it, or who, in his or her official
4 capacity, knowingly and fraudulently acts in contravention or
5 violation of any of those laws, is, unless a different punishment is
6 prescribed by this code, punishable by fine not exceeding one
7 thousand dollars (\$1,000) or by imprisonment ~~in the state prison~~
8 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
9 16 months or two or three years, or by both *that fine and*
10 *imprisonment*.

11 SEC. 58. *Section 18100 of the Elections Code is amended to*
12 *read:*

13 18100. (a) Every person who willfully causes, procures, or
14 allows himself or herself or any other person to be registered as a
15 voter, knowing that he or she or that other person is not entitled
16 to registration, is punishable by imprisonment ~~in the state prison~~
17 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
18 16 months or two or three years, or in a county jail for not more
19 than one year.

20 (b) Every person who knowingly and willfully signs, or causes
21 or procures the signing of, an affidavit of registration of a
22 nonexistent person, and who mails or delivers, or causes or
23 procures the mailing or delivery of, that affidavit to a county
24 elections official is guilty of a crime punishable by imprisonment
25 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
26 *the Penal Code* for 16 months or two or three years, or in a county
27 jail for not more than one year. For purposes of this subdivision,
28 “nonexistent person” includes, but is not limited to, deceased
29 persons, animals, and inanimate objects.

30 SEC. 59. *Section 18101 of the Elections Code is amended to*
31 *read:*

32 18101. Every person who knowingly and willfully completes,
33 or causes or procures the completion of, in whole or in part, an
34 affidavit of registration or a voter registration card, with the intent
35 to cause the registration or reregistration as a voter of a fictitious
36 person or of any person who has not requested registration or
37 reregistration as a voter, is guilty of a crime punishable by
38 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
39 *Section 1170 of the Penal Code* for 16 months or two or three
40 years, or in a county jail for not more than one year.

1 *SEC. 60. Section 18102 of the Elections Code is amended to*
2 *read:*

3 18102. Any deputy elections official or registration elections
4 official who knowingly registers a nonexistent person, knowingly
5 registers a person under a false name or address, or knowingly
6 registers a person who is ineligible to register is punishable by
7 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
8 *Section 1170 of the Penal Code* for 16 months or two or three
9 years, or in a county jail for not more than one year.

10 *SEC. 61. Section 18106 of the Elections Code is amended to*
11 *read:*

12 18106. Every person is punishable by ~~imprisonment in the state~~
13 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
14 ~~Code~~ for 16 months or two or three years, or in ~~the~~ a county jail
15 for not more than one year who, without the specific consent of
16 the affiant, willfully and with the intent to affect the affiant's voting
17 rights, causes, procures, or allows the completion, alteration, or
18 defacement of the affiant's party affiliation declaration contained
19 in an executed, or partially executed, affidavit of registration
20 pursuant to subdivision (h) of Section 2150 and Section 2151.

21 This section shall not apply to a county elections official carrying
22 out his or her official duties.

23 *SEC. 62. Section 18200 of the Elections Code is amended to*
24 *read:*

25 18200. Every person who subscribes to any nomination petition
26 a fictitious name, or who intentionally subscribes thereto the name
27 of another, or who causes another to subscribe a fictitious name
28 to a nomination petition, is guilty of a felony and is punishable by
29 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
30 *Section 1170 of the Penal Code* for 16 months or two or three
31 years.

32 *SEC. 63. Section 18201 of the Elections Code is amended to*
33 *read:*

34 18201. Any person who falsely makes or fraudulently defaces
35 or destroys all or any part of a nomination paper, is punishable by
36 a fine not exceeding one thousand dollars (\$1,000) or by
37 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
38 *Section 1170 of the Penal Code* for 16 months or two or three years
39 or by both ~~the~~ *that* fine and imprisonment.

1 *SEC. 64. Section 18203 of the Elections Code is amended to*
2 *read:*

3 18203. Any person who files or submits for filing a nomination
4 paper or declaration of candidacy knowing that it or any part of it
5 has been made falsely is punishable by a fine not exceeding one
6 thousand dollars (\$1,000) or by imprisonment ~~in the state prison~~
7 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
8 16 months or two or three years or by both ~~the~~ *that* fine and
9 imprisonment.

10 *SEC. 65. Section 18204 of the Elections Code is amended to*
11 *read:*

12 18204. Any person who willfully suppresses all or any part of
13 a nomination paper or declaration of candidacy either before or
14 after filing is punishable by a fine not exceeding one thousand
15 dollars (\$1,000) or by imprisonment ~~in the state prison~~ *pursuant*
16 *to subdivision (h) of Section 1170 of the Penal Code* for 16 months
17 or two or three years or by both ~~the~~ *that* fine and imprisonment.

18 *SEC. 66. Section 18205 of the Elections Code is amended to*
19 *read:*

20 18205. A person shall not directly or through any other person
21 advance, pay, solicit, or receive or cause to be advanced, paid,
22 solicited, or received, any money or other valuable consideration
23 to or for the use of any person in order to induce a person not to
24 become or to withdraw as a candidate for public office. Violation
25 of this section shall be punishable by imprisonment ~~in the state~~
26 ~~prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal*
27 *Code* for 16 months or two or three years.

28 *SEC. 67. Section 18310 of the Elections Code is amended to*
29 *read:*

30 18310. A person shall not directly or through any other person
31 pay or receive any money or other valuable consideration before,
32 during, or after an election in order to reward any person or as a
33 reward for voting for or against or agreeing to vote for or against
34 the election or endorsement of any other person as the nominee or
35 candidate of any caucus, convention, organized assemblage of
36 delegates, or other body representing or claiming to represent a
37 political party, candidate, or principle, or any club, society, or
38 association. A violation of this section shall be punishable by
39 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*

1 *Section 1170 of the Penal Code* for 16 months or two or three
2 years.

3 *SEC. 68. Section 18311 of the Elections Code is amended to*
4 *read:*

5 18311. Every person is punishable by imprisonment ~~in the state~~
6 ~~prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal*
7 *Code* for 16 months or two or three years who:

8 (a) Gives or offers a bribe to any officer or member of any
9 political convention, committee, or political gathering of any kind,
10 held for the purpose of nominating candidates for offices of honor,
11 trust, or profit in this state, with intent to influence the person to
12 whom the bribe is given or offered to be more favorable to one
13 candidate than another.

14 (b) Being a member of any of the bodies mentioned in this
15 section receives or offers to receive any bribe described in
16 subdivision (a).

17 *SEC. 69. Section 18400 of the Elections Code is amended to*
18 *read:*

19 18400. A person who makes, uses, keeps, or furnishes to others,
20 paper or cards watermarked or overprinted in imitation of ballot
21 paper or ballot cards is punishable by a fine not exceeding one
22 thousand dollars (\$1,000), or by imprisonment ~~in the state prison~~
23 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
24 16 months, two or three years, or by both ~~the~~ *that* fine and
25 imprisonment.

26 *SEC. 70. Section 18403 of the Elections Code is amended to*
27 *read:*

28 18403. Any person other than an elections official or a member
29 of the precinct board who receives a voted ballot from a voter or
30 who examines or solicits the voter to show his or her voted ballot
31 is punishable by a fine not exceeding ten thousand dollars
32 (\$10,000), by imprisonment ~~in the state prison~~ *pursuant to*
33 *subdivision (h) of Section 1170 of the Penal Code* for 16 months
34 or two or three years, or in a county jail not exceeding one year,
35 or by both ~~the~~ *that* fine and imprisonment. This section shall not
36 apply to persons returning a vote by mail ballot pursuant to
37 Sections 3017 and 3021 or persons assisting a voter pursuant to
38 Section 14282.

39 *SEC. 71. Section 18502 of the Elections Code is amended to*
40 *read:*

1 18502. Any person who in any manner interferes with the
2 officers holding an election or conducting a canvass, or with the
3 voters lawfully exercising their rights of voting at an election, as
4 to prevent the election or canvass from being fairly held and
5 lawfully conducted, is punishable by imprisonment ~~in the state~~
6 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
7 Code for 16 months or two or three years.

8 SEC. 72. Section 18520 of the Elections Code is amended to
9 read:

10 18520. A person shall not directly or through another person
11 give, offer, or promise any office, place, or employment, or promise
12 to procure or endeavor to procure any office, place, or employment
13 to or for any voter, or to or for any other person, in order to induce
14 that voter at any election to:

- 15 (a) Refrain from voting.
- 16 (b) Vote for any particular person.
- 17 (c) Refrain from voting for any particular person.

18 A violation of any of the provisions of this section shall be
19 punishable by imprisonment ~~in the state prison~~ pursuant to
20 subdivision (h) of Section 1170 of the Penal Code for 16 months
21 or two or three years.

22 SEC. 73. Section 18521 of the Elections Code is amended to
23 read:

24 18521. A person shall not directly or through any other person
25 receive, agree, or contract for, before, during or after an election,
26 any money, gift, loan, or other valuable consideration, office, place,
27 or employment for himself or any other person because he or any
28 other person:

- 29 (a) Voted, agreed to vote, refrained from voting, or agreed to
30 refrain from voting for any particular person or measure.
- 31 (b) Remained away from the polls.
- 32 (c) Refrained or agreed to refrain from voting.
- 33 (d) Induced any other person to:
 - 34 (1) Remain away from the polls.
 - 35 (2) Refrain from voting.
 - 36 (3) Vote or refrain from voting for any particular person or
37 measure.

38 Any person violating this section is punishable by imprisonment
39 ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of
40 the Penal Code for 16 months or two or three years.

1 *SEC. 74. Section 18522 of the Elections Code is amended to*
2 *read:*

3 18522. Neither a person nor a controlled committee shall
4 directly or through any other person or controlled committee pay,
5 lend, or contribute, or offer or promise to pay, lend, or contribute,
6 any money or other valuable consideration to or for any voter or
7 to or for any other person to:

8 (a) Induce any voter to:

9 (1) Refrain from voting at any election.

10 (2) Vote or refrain from voting at an election for any particular
11 person or measure.

12 (3) Remain away from the polls at an election.

13 (b) Reward any voter for having:

14 (1) Refrained from voting.

15 (2) Voted for any particular person or measure.

16 (3) Refrained from voting for any particular person or measure.

17 (4) Remained away from the polls at an election.

18 Any person or candidate violating this section is punishable by
19 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
20 *Section 1170 of the Penal Code* for 16 months or two or three
21 years.

22 *SEC. 75. Section 18523 of the Elections Code is amended to*
23 *read:*

24 18523. A person shall not directly or through any other person
25 advance or pay, or cause to be paid, any money or other valuable
26 thing to or for the use of any other person, with the intent that it,
27 or any part thereof, shall be used in bribery at any election, or
28 knowingly pay or cause to be paid any money or other valuable
29 thing to any person in discharge or repayment of any money,
30 wholly or in part, expended in bribery at any election.

31 Any person violating this section is punishable by imprisonment
32 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of*
33 *the Penal Code* for 16 months or two or three years.

34 *SEC. 76. Section 18524 of the Elections Code is amended to*
35 *read:*

36 18524. A person shall not directly or through any other person
37 advance or pay, or cause to be paid, any money or other valuable
38 thing to or for the use of any other person, with the intent that it,
39 or any part thereof, will be used for boarding, lodging, or
40 maintaining a person at any place or domicile in any election

1 precinct, ward, or district, with intent to secure the vote of that
2 person or to induce that person to vote for any particular person
3 or measure.

4 Any person violating this section is punishable by imprisonment
5 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
6 ~~the Penal Code~~ for 16 months or two or three years.

7 SEC. 77. Section 18540 of the Elections Code is amended to
8 read:

9 18540. (a) Every person who makes use of or threatens to
10 make use of any force, violence, or tactic of coercion or
11 intimidation, to induce or compel any other person to vote or refrain
12 from voting at any election or to vote or refrain from voting for
13 any particular person or measure at any election, or because any
14 person voted or refrained from voting at any election or voted or
15 refrained from voting for any particular person or measure at any
16 election is guilty of a felony punishable by imprisonment ~~in the~~
17 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
18 ~~Penal Code~~ for 16 months or two or three years.

19 (b) Every person who hires or arranges for any other person to
20 make use of or threaten to make use of any force, violence, or
21 tactic of coercion or intimidation, to induce or compel any other
22 person to vote or refrain from voting at any election or to vote or
23 refrain from voting for any particular person or measure at any
24 election, or because any person voted or refrained from voting at
25 any election or voted or refrained from voting for any particular
26 person or measure at any election is guilty of a felony punishable
27 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
28 ~~Section 1170 of the Penal Code~~ for 16 months or two or three
29 years.

30 SEC. 78. Section 18544 of the Elections Code is amended to
31 read:

32 18544. (a) Any person in possession of a firearm or any
33 uniformed peace officer, private guard, or security personnel or
34 any person who is wearing a uniform of a peace officer, guard, or
35 security personnel, who is stationed in the immediate vicinity of,
36 or posted at, a polling place without written authorization of the
37 appropriate city or county elections official is punishable by a fine
38 not exceeding ten thousand dollars (\$10,000), by imprisonment ~~in~~
39 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~

1 *Penal Code* for 16 months or two or three years, or in a county jail
2 not exceeding one year, or by both ~~the~~ *that* fine and imprisonment.

3 (b) This section shall not apply to any of the following:

4 (1) An unarmed uniformed guard or security personnel who is
5 at the polling place to cast his or her vote.

6 (2) A peace officer who is conducting official business in the
7 course of his or her public employment or who is at the polling
8 place to cast his or her vote.

9 (3) A private guard or security personnel hired or arranged for
10 by a city or county elections official.

11 (4) A private guard or security personnel hired or arranged for
12 by the owner or manager of the facility or property in which the
13 polling place is located if the guard or security personnel is not
14 hired or arranged solely for the day on which an election is held.

15 *SEC. 79. Section 18545 of the Elections Code is amended to*
16 *read:*

17 18545. Any person who hires or arranges for any other person
18 in possession of a firearm or any uniformed peace officer, private
19 guard, or security personnel or any person who is wearing a
20 uniform of a peace officer, guard, or security personnel, to be
21 stationed in the immediate vicinity of, or posted at, a polling place
22 without written authorization of the appropriate elections official
23 is punishable by a fine not exceeding ten thousand dollars
24 (\$10,000), by imprisonment ~~in the state prison pursuant to~~
25 *subdivision (h) of Section 1170 of the Penal Code* for 16 months
26 or two or three years, or in a county jail not exceeding one year,
27 or by both ~~the~~ *that* fine and imprisonment. This section shall not
28 apply to the owner or manager of the facility or property in which
29 the polling place is located if the private guard or security personnel
30 is not hired or arranged solely for the day on which the election is
31 held.

32 *SEC. 80. Section 18560 of the Elections Code is amended to*
33 *read:*

34 18560. Every person is guilty of a crime punishable by
35 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
36 *Section 1170 of the Penal Code* for 16 months or two or three
37 years, or in a county jail not exceeding one year, who:

38 (a) Not being entitled to vote at an election, fraudulently votes
39 or fraudulently attempts to vote at that election.

1 (b) Being entitled to vote at an election, votes more than once,
2 attempts to vote more than once, or knowingly hands in two or
3 more ballots folded together at that election.

4 (c) Impersonates or attempts to impersonate a voter at an
5 election.

6 *SEC. 81. Section 18561 of the Elections Code is amended to*
7 *read:*

8 18561. Every person is punishable by imprisonment ~~in the state~~
9 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
10 Code for 16 months or two or three years who:

11 (a) Procures, assists, counsels, or advises another to give or
12 offer his vote at any election, knowing that the person is not
13 qualified to vote.

14 (b) Aids or abets in the commission of any of the offenses
15 mentioned in Section 18560.

16 *SEC. 82. Section 18564 of the Elections Code is amended to*
17 *read:*

18 18564. Any person is guilty of a felony, punishable by
19 imprisonment ~~in a state prison~~ pursuant to subdivision (h) of
20 Section 1170 of the Penal Code for two, three, or four years who,
21 before or during an election:

22 (a) Tampers with, interferes with, or attempts to interfere with,
23 the correct operation of, or willfully damages in order to prevent
24 the use of, any voting machine, voting device, voting system, vote
25 tabulating device, or ballot tally software program source codes.

26 (b) Interferes or attempts to interfere with the secrecy of voting
27 or ballot tally software program source codes.

28 (c) Knowingly, and without authorization, makes or has in his
29 or her possession a key to a voting machine that has been adopted
30 and will be used in elections in this state.

31 (d) Willfully substitutes or attempts to substitute forged or
32 counterfeit ballot tally software program source codes.

33 *SEC. 83. Section 18566 of the Elections Code is amended to*
34 *read:*

35 18566. Every person is punishable by imprisonment ~~in the state~~
36 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
37 Code for two, three, or four years who:

38 (a) Forges or counterfeits returns of an election purported to
39 have been held at a precinct where no election was in fact held.

(b) Willfully substitutes forged or counterfeit returns of election in the place of true returns for a precinct where an election was actually held.

SEC. 84. Section 18567 of the Elections Code is amended to read:

18567. Every person who willfully adds to or subtracts from the votes actually cast at an election, in any official or unofficial returns, or who alters the returns, is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months or two or three years.

SEC. 85. Section 18568 of the Elections Code is amended to read:

18568. Every person is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months or two or three years, or by both ~~the~~ *that* fine and imprisonment, who:

(a) Aids in changing or destroying any poll list or official ballot.

(b) Aids in wrongfully placing any ballots in the ballot container or in taking any therefrom.

(c) Adds or attempts to add any ballots to those legally polled at any election by fraudulently putting them into the ballot container, either before or after the ballots therein have been counted.

(d) Adds to or mixes with, or attempts to add to or mix with, the ballots polled, any other ballots, while they are being counted or canvassed or at any other time, with intent to change the result of the election, or allows another to do so, when in his or her power to prevent it.

(e) Carries away or destroys, attempts to carry away or destroy, or knowingly allows another to carry away or destroy, any poll list, ballot container, or ballots lawfully polled or who willfully detains, mutilates, or destroys any election returns.

(f) Removes any unvoted ballots from the polling place before the completion of the ballot count.

SEC. 86. Section 18573 of the Elections Code is amended to read:

18573. Every person is guilty of a felony punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months or two or three years

1 who furnishes any voter wishing to vote, who cannot read, with a
2 ballot, informing or giving that voter to understand that it contains
3 a name written or printed thereon different from the name which
4 is written or printed thereon, or defrauds any voter at any election
5 by deceiving and causing him or her to vote for a different person
6 for any office than he or she intended or desired to vote for.

7 *SEC. 87. Section 18575 of the Elections Code is amended to*
8 *read:*

9 18575. Every person is guilty of a felony, and on conviction
10 shall be punished by imprisonment ~~in the state prison pursuant to~~
11 *subdivision (h) of Section 1170 of the Penal Code* for two, three
12 or four years, who at any election:

13 (a) Without first having been appointed and qualified, acts as
14 an election officer.

15 (b) Not being an election officer, performs or discharges any
16 of the duties of an election officer in regard to the handling,
17 counting, or canvassing of any ballots.

18 *SEC. 88. Section 18578 of the Elections Code is amended to*
19 *read:*

20 18578. Any person who applies for, or who votes or attempts
21 to vote, a vote by mail ballot by fraudulently signing the name of
22 a fictitious person, or of a regularly qualified voter, or of a person
23 who is not qualified to vote, is guilty of a felony punishable by
24 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
25 *Section 1170 of the Penal Code* for 16 months or two or three
26 years, by a fine not exceeding one thousand dollars (\$1,000), or
27 by both ~~the~~ *that* fine and imprisonment.

28 *SEC. 89. Section 18611 of the Elections Code is amended to*
29 *read:*

30 18611. Every person is punishable by a fine not exceeding five
31 thousand dollars (\$5,000), or by imprisonment ~~in the state prison~~
32 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
33 16 months or two or three years, or in a county jail not exceeding
34 one year, or by both ~~the~~ *that* fine and imprisonment, who circulates
35 or causes to be circulated any initiative, referendum, or recall
36 petition, knowing it to contain false, forged, or fictitious names.

37 *SEC. 90. Section 18613 of the Elections Code is amended to*
38 *read:*

39 18613. Every person who subscribes to any initiative,
40 referendum, or recall petition a fictitious name, or who subscribes

1 thereto the name of another, or who causes another to subscribe
2 such a name to that petition, is guilty of a felony and is punishable
3 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
4 Section 1170 of the Penal Code for two, three, or four years.

5 SEC. 91. Section 18614 of the Elections Code is amended to
6 read:

7 18614. Every person is punishable by a fine not exceeding five
8 thousand dollars (\$5,000), or by imprisonment ~~in the state prison~~
9 pursuant to subdivision (h) of Section 1170 of the Penal Code for
10 16 months or two or three years, or in a county jail not exceeding
11 one year, or by both ~~the~~ that fine and imprisonment, who files in
12 the office of the elections official or other officer designated by
13 law to receive the filing, any initiative, referendum, or recall
14 petition to which is attached, appended or subscribed any signature
15 which the person filing the petition knows to be false or fraudulent
16 or not the genuine signature of the person whose name it purports
17 to be.

18 SEC. 92. Section 18620 of the Elections Code is amended to
19 read:

20 18620. Every person who seeks, solicits, bargains for, or
21 obtains any money, thing of value, or advantage of or from any
22 person, firm, or corporation for the purpose or represented purpose
23 of fraudulently inducing, persuading, or seeking the proponent or
24 proponents of any initiative or referendum measure or recall
25 petition to (a) abandon the measure or petition, (b) fail, neglect,
26 or refuse to file in the office of the elections official or other officer
27 designated by law, within the time required by law, the initiative
28 or referendum measure or recall petition after securing the number
29 of signatures required to qualify the measure or petition, (c) stop
30 the circulation of the initiative or referendum measure or recall
31 petition, or (d) perform any act that will prevent or aid in
32 preventing the initiative or referendum measure or recall petition
33 from qualifying as an initiative or referendum measure, or the
34 recall petition from resulting in a recall election, is punishable by
35 a fine not exceeding five thousand dollars (\$5,000), or by
36 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
37 Section 1170 of the Penal Code for 16 months or two or three
38 years, or in a county jail not exceeding one year, or by both ~~the~~
39 that fine and imprisonment.

1 *SEC. 93. Section 18621 of the Elections Code is amended to*
2 *read:*

3 18621. Any proponent of an initiative or referendum measure
4 or recall petition who seeks, solicits, bargains for, or obtains any
5 money or thing of value of or from any person, firm, or corporation
6 for the purpose of abandoning the same or stopping the circulation
7 of petitions concerning the same, or failing or neglecting or
8 refusing to file the measure or petition in the office of the elections
9 official or other officer designated by law within the time required
10 by law after obtaining the number of signatures required under the
11 law to qualify the measure or petition, or performing any act that
12 will prevent or aid in preventing the initiative, referendum or recall
13 proposed from qualifying as an initiative or referendum measure,
14 or resulting in a recall election is punishable by a fine not exceeding
15 five thousand dollars (\$5,000) or by imprisonment ~~in the state~~
16 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
17 *Code for 16 months or two or three years, or in a county jail not*
18 *exceeding one year, or by both ~~the~~ that fine and imprisonment.*

19 *SEC. 94. Section 18640 of the Elections Code is amended to*
20 *read:*

21 18640. Any person working for the proponent or proponents
22 of an initiative or referendum measure or recall petition who solicits
23 signatures to qualify the measure or petition and accepts any
24 payment therefor and who fails to surrender the measure or petition
25 to the proponents thereof for filing is punishable by a fine not
26 exceeding five thousand dollars (\$5,000), or by imprisonment ~~in~~
27 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
28 *Penal Code for 16 months or two or three years, or in a county jail*
29 *not exceeding one year, or by both ~~the~~ that fine and imprisonment.*

30 *SEC. 95. Section 18660 of the Elections Code is amended to*
31 *read:*

32 18660. Every person is punishable by a fine not exceeding five
33 thousand dollars (\$5,000), or by imprisonment ~~in the state prison~~
34 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code for~~
35 16 months or two or three years, or in a county jail not exceeding
36 one year, or by both ~~the~~ that fine and imprisonment, who makes
37 any false affidavit concerning any initiative, referendum, or recall
38 petition or the signatures appended thereto.

39 *SEC. 96. Section 18661 of the Elections Code is amended to*
40 *read:*

1 18661. Every public official or employee is punishable by a
2 fine not exceeding five thousand dollars (\$5,000), or by
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170 of the Penal Code* for 16 months or two or three
5 years, or in a county jail not exceeding one year, or by both ~~the~~
6 *that* fine and imprisonment, who knowingly makes any false return,
7 certification or affidavit concerning any initiative, referendum, or
8 recall petition or the signatures appended thereto.

9 *SEC. 97. Section 18680 of the Elections Code is amended to*
10 *read:*

11 18680. Every person who is entrusted with money or things
12 of value for the purpose of promoting or defeating any initiative,
13 referendum, or recall petition or any measure that has qualified
14 for the ballot is a trustee of the money or things of value. If a person
15 wrongfully appropriates the money or things of value to any use
16 or purpose not in the due and lawful execution of the trust, the
17 person shall be punishable by a fine not exceeding five thousand
18 dollars (\$5,000), or by imprisonment ~~in the state prison pursuant~~
19 *to subdivision (h) of Section 1170 of the Penal Code* for 16 months
20 or two or three years, or in a county jail not exceeding one year,
21 or by both ~~the~~ *that* fine and imprisonment. The following expenses
22 are within the due and lawful execution of the trust:

23 (a) Securing signatures to initiative, referendum, or recall
24 petitions.

25 (b) Circulating initiative, referendum, or recall petitions.

26 (c) Holding and conducting public meetings.

27 (d) Printing and circulating prior to an election:

28 (1) Specimen ballots.

29 (2) Handbills.

30 (3) Cards.

31 (4) Other papers.

32 (e) Advertising.

33 (f) Postage.

34 (g) Expressage.

35 (h) Telegraphing.

36 (i) Telephoning.

37 (j) All salaries and expenses of:

38 (1) Campaign managers.

39 (2) Lecturers.

40 (3) Solicitors.

(4) Agents.

(5) All persons employed in transacting business at headquarters or branch offices, if the business transacted is related to promoting or defeating an initiative, referendum, or recall petition or any measure which has qualified for the ballot.

(k) Maintaining headquarters and branch offices.

(l) Renting of rooms for the transaction of the business of an association.

(m) Attorney's fees and other costs in connection with litigation where the litigation arises directly out of any of the following:

(1) Activities related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

(2) The enactment, by the initiative process, of any ordinance, charter amendment, statute, or constitutional amendment.

(3) An election contest or recount.

(4) A violation of state or local campaign, disclosure, or election laws.

The amendment of this section by adding subdivision (m) thereto, made at the 1991–92 Regular Session of the Legislature, does not constitute a change in, but is declaratory of, the existing law.

Expenses for food, clothing, shelter and other personal needs of the trustee are not within the due and lawful execution of the trust. However, expenses for travel and necessary accommodations for the trustee are within the due and lawful execution of the trust, if the travel and accommodations are related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

SEC. 98. Section 3510 of the Financial Code is amended to read:

3510. It shall be unlawful for any director, officer, agent, or employee of any corporation to use or to conspire to use the credit, the funds, or the power of the corporation to fix or control the price of any commodities, and any person violating this section shall be punished by a fine of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or by both that fine and imprisonment, in the discretion of the court.

1 *SEC. 99. Section 3532 of the Financial Code is amended to*
2 *read:*

3 3532. Whoever being connected in any capacity with any
4 corporation represents in any way that the State of California is
5 liable for the payment of any bond or other obligation, or the
6 interest thereon, issued or incurred by any corporation, or that the
7 State of California incurs any liability in respect of any act or
8 omission of the corporation, shall be punished by a fine of not
9 more than ten thousand dollars (\$10,000) and by imprisonment ~~in~~
10 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
11 *Penal Code.*

12 *SEC. 100. Section 5300 of the Financial Code is amended to*
13 *read:*

14 5300. Every person who willfully violates or willfully fails to
15 comply with any of the provisions of this division is guilty of a
16 public offense. Except where the offense is declared to be a felony
17 or a misdemeanor or a different punishment is prescribed, a person
18 convicted under this section shall be punished by a fine of not
19 more than ten thousand dollars (\$10,000), or by imprisonment in
20 the county jail not exceeding one year or ~~in the state prison~~
21 *pursuant to subdivision (h) of Section 1170 of the Penal Code,* or
22 by both that fine and imprisonment.

23 *SEC. 101. Section 5302 of the Financial Code is amended to*
24 *read:*

25 5302. (a) Whoever knowingly violates subdivision (a) or (b)
26 of Section 6525.5 shall be punished by a fine of not more than one
27 million dollars (\$1,000,000) for each day the violation continues,
28 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
29 *Section 1170 of the Penal Code* for 2, 3, or 4 years, or by both that
30 fine and imprisonment.

31 (b) Any person who is subject to an order issued pursuant to
32 Section 8201 who knowingly violates the order, directly or
33 indirectly, shall be punished by a fine of not more than one million
34 dollars (\$1,000,000) for each day violation continues, by
35 imprisonment ~~in state prison pursuant to subdivision (h) of Section~~
36 *1170 of the Penal Code* for 2, 3, or 4 years, or by both that fine
37 and imprisonment.

38 *SEC. 102. Section 5303 of the Financial Code is amended to*
39 *read:*

1 5303. Any officer, director, employee, or agent of any
2 association who (a) willfully makes or knowingly concurs in the
3 making or publishing of a false or untrue material entry in any
4 book, record, report, statement concerning the business or affairs
5 of the association, or statement of condition or in connection with
6 any transaction of the association, with intent to deceive any officer
7 or director thereof, or with intent to deceive any agency or
8 examiner, whether private or public, employed or lawfully
9 appointed to examine into the association's condition or to examine
10 into any of the association's affairs or transactions, or with intent
11 to deceive any public officer, office, or board to which the
12 association is required by law to report or that has authority by
13 law to examine into the association's affairs or transactions, (b)
14 with like intent, willfully omits to make a material new entry of
15 any matter particularly pertaining to the business, property,
16 condition, affairs, transactions, assets, or accounts of the association
17 in any appropriate book, record, report, or statement of the
18 association, which entry is required to be made by law or generally
19 accepted accounting principles applicable to a savings institution,
20 or (c) with like intent, willfully alters, abstracts, conceals, refuses
21 to allow to be inspected by the commissioner or the commissioner's
22 deputies or examiners, or destroys any books, records, reports, or
23 statements of the association made, written, or kept, or required
24 to be made, written, or kept by him or her or under his or her
25 direction, shall be punished by a fine of not more than one million
26 dollars (\$1,000,000), by imprisonment ~~in the state prison pursuant~~
27 *to subdivision (h) of Section 1170 of the Penal Code* for two, three,
28 or four years, or by both that fine and imprisonment.

29 *SEC. 103. Section 5304 of the Financial Code is amended to*
30 *read:*

31 5304. (a) It is unlawful for any person to corruptly give, offer,
32 or promise anything of value to any other person, with intent to
33 influence or reward any institution-affiliated party in connection
34 with any business or transaction of a savings association.

35 (b) It is unlawful for any institution-affiliated party to corruptly
36 solicit or demand for the benefit of any person, or corruptly accept
37 or agree to accept, anything of value from any person, intending
38 to be influenced or rewarded in connection with any business or
39 transaction of the savings association.

(c) Any person who violates subdivision (a) or (b) shall be punished by a fine of not more than one million dollars (\$1,000,000) or three times the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted, whichever is greater, by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the value of the thing given, offered, promised, solicited, demanded, accepted, or agreed to be accepted does not exceed one thousand dollars (\$1,000), the offense shall instead be punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment ~~in the state prison~~ ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by both that fine and imprisonment.

(d) This section does not apply to bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business or where the amount of money or monetary worth of the thing of value is one hundred dollars (\$100) or less.

SEC. 104. Section 5305 of the Financial Code is amended to read:

5305. Any institution-affiliated party who abstracts or willfully misapplies any of the money, funds, or property of the savings association, or willfully misapplies its credit, is guilty of a felony and shall be punished by a fine of not more than one million dollars (\$1,000,000), by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 2, 3, or 4 years, or by both that fine and imprisonment. However, if the amount abstracted or willfully misapplied does not exceed two hundred fifty dollars (\$250), the offense shall instead be punishable by a fine of not more than one thousand dollars (\$1,000), by imprisonment ~~in the state prison~~ ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by both that fine and imprisonment.

SEC. 105. Section 5307 of the Financial Code is amended to read:

5307. Whoever willfully and knowingly makes, issues, circulates, transmits, or causes or knowingly permits to be made, issued, circulated, or transmitted, any statement or rumor which is written, printed, reproduced in any manner, or communicated

1 by word of mouth, that is untrue in fact and is directly or by
2 inference false, or malicious in that it is calculated to injure the
3 reputation or business, financial condition, or standing of any
4 association shall be punished by a fine of not more than ten
5 thousand dollars (\$10,000), by imprisonment in ~~the a~~ county jail
6 not exceeding one year or ~~in the state prison pursuant to~~
7 *subdivision (h) of Section 1170 of the Penal Code*, or by both that
8 fine and imprisonment.

9 *SEC. 106. Section 10004 of the Financial Code is amended to*
10 *read:*

11 10004. Except as expressly provided for in this chapter, any
12 person who, as principal, agent, salesperson, solicitor, or in any
13 other capacity, solicits or conducts in this state the business of
14 selling, disposing of, taking, or soliciting savings accounts of any
15 foreign savings association that has not complied with all the
16 requirements of this chapter, is guilty of a public offense punishable
17 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
18 *Section 1170 of the Penal Code*, or in a county jail not exceeding
19 one year, or by a fine not exceeding ten thousand dollars (\$10,000),
20 or by both ~~a~~ *that* fine and imprisonment.

21 *SEC. 107. Section 12102 of the Financial Code is amended to*
22 *read:*

23 12102. Any person who willfully violates any provision of this
24 division, or who willfully violates any rule or order under this
25 division, shall, upon conviction, be fined not more than ten
26 thousand dollars (\$10,000), or imprisoned ~~in the state prison~~
27 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
28 in a county jail for not more than one year, or be punished by both
29 ~~such that~~ fine and imprisonment, but no person may be imprisoned
30 for the violation of any rule or order unless he or she had
31 knowledge of the rule or order. Conviction under this section shall
32 not preclude the commissioner from exercising the authority
33 provided in Section 12400.

34 *SEC. 108. Section 14752 of the Financial Code is amended to*
35 *read:*

36 14752. Except as provided for in Section 14051 and this article,
37 any person who willfully violates any provision of this division,
38 or who willfully violates any rule or order issued pursuant to this
39 division, shall upon conviction be fined not more than ten thousand
40 dollars (\$10,000) or imprisoned ~~in the state prison pursuant to~~

1 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
2 jail for not more than one year, or be punished by both ~~such that~~
3 fine and imprisonment, but no person may be imprisoned for the
4 violation of any rule or order unless he or she had knowledge of
5 the rule or order. Conviction under this section shall not bar the
6 exercise of the administrative authority of the commissioner
7 provided in Section 14208.

8 *SEC. 109. Section 17700 of the Financial Code is amended to*
9 *read:*

10 17700. Any person who willfully violates any provision of this
11 division, or who willfully violates any rule or order under this
12 division, shall, upon conviction, be fined not more than ten
13 thousand dollars (\$10,000), imprisoned in a county jail for not
14 more than one year, ~~imprisoned in the state prison pursuant to~~
15 *subdivision (h) of Section 1170 of the Penal Code*, or be punished
16 by both that fine and imprisonment, but no person may be
17 imprisoned for the violation of any rule or order unless he or she
18 had knowledge of the rule or order. Conviction under this section
19 shall not preclude the commissioner from exercising the authority
20 provided in Section 17423.

21 *SEC. 110. Section 18349.5 of the Financial Code is amended*
22 *to read:*

23 18349.5. (a) For the purposes of this section, the following
24 definitions are applicable:

25 (1) "Account holder" includes, in the case of an investment
26 certificate account, an investment certificate holder; in the case of
27 a trust account, each trustor and beneficiary of the trust account;
28 and, in the case of any other fiduciary account, each person who
29 occupies, with respect to the account, a position which is similar
30 to the position that a trustor or beneficiary occupies with respect
31 to a trust account.

32 (2) "Industrial loan company" means any corporation which
33 falls within the definitions of Sections 18003 and 18003.5.

34 (3) "Order" means any approval, consent, authorization, permit,
35 exemption, denial, prohibition, or requirement applicable to a
36 specific case issued by the commissioner, including without
37 limitation, any condition thereof. "Order" does not include any
38 certificate of authority or license issued by the commissioner, but
39 does include any condition of a license and any written agreement
40 made by any person with the commissioner under this division.

1 (4) "Subject person of an industrial loan company" means any
2 director, officer, or employee of the industrial loan company, or
3 any person who participates in the conduct of the business of the
4 industrial loan company. However, "subject person of an industrial
5 loan company" does not include an individual who is a director,
6 officer, or employee of a controlling person of an industrial loan
7 company unless the individual is a director, officer, or employee
8 of the industrial loan company or participates in the conduct of
9 the industrial loan company.

10 (5) "Controlling person" means a person who, directly or
11 indirectly, controls an industrial loan company.

12 (6) "Violation" includes, without limitation, any act done, alone
13 or with one or more persons, for or toward causing, bringing about,
14 participation in, counseling, aiding or abetting a violation.

15 (b) If, after notice and opportunity for hearing, the commissioner
16 finds the following, the commissioner may issue an order
17 suspending or removing a subject person of an industrial loan
18 company from his or her office with the industrial loan company
19 and prohibiting the subject person from further participating in
20 any manner in the conduct of the business of the industrial loan
21 company, except with the prior consent of the commissioner:

22 (1) (A) That the subject person has violated any provision of
23 this division or of any regulation or order issued under this division,
24 or any provision of any other applicable law relating to the business
25 of the industrial loan company; or

26 (B) That the subject person has engaged or participated in any
27 unsafe or unsound act with respect to the business of the industrial
28 loan company; or

29 (C) That the subject person has committed or engaged in any
30 act which constitutes a breach of his or her fiduciary duty as a
31 subject person; and

32 (2) (A) That the industrial loan company has suffered or will
33 probably suffer substantial financial loss or other damage by reason
34 of that violation, act, or breach of fiduciary duty; or

35 (B) That the interests of the industrial loan company's
36 accountholders have been or are likely to be seriously prejudiced
37 by reason of the violation, act, or breach of fiduciary duty; or

38 (C) That the subject person has received financial gain by reason
39 of that violation, act, or breach of fiduciary duty; and

1 (3) That the violation, act, or breach of fiduciary duty is one
2 involving personal dishonesty on the part of the subject person, or
3 one which demonstrates a willful or continuing disregard for the
4 safety or soundness of the industrial loan company.

5 (c) If, after notice and opportunity for hearing, the commissioner
6 finds the following, the commissioner may issue an order
7 suspending or removing a subject person of an industrial loan
8 company from his or her office with the industrial loan company
9 and prohibiting the subject person from further participating in
10 any manner in the conduct of the business of the industrial loan
11 company, except with the prior consent of the commissioner:

12 (1) That the subject person's conduct or practice with respect
13 to another industrial loan company or business institution has
14 resulted in substantial financial loss or other damage; and

15 (2) That the conduct or practice has evidenced personal
16 dishonesty or willful or continuing disregard for the safety and
17 soundness of the other industrial loan company or business
18 institution; and

19 (3) That the conduct or practice is relevant in that it demonstrates
20 unfitness to continue as a subject person of the industrial loan
21 company.

22 (d) If the commissioner finds the following, the commissioner
23 may immediately issue an order suspending or removing a subject
24 person of an industrial loan company from his or her office with
25 the industrial loan company and prohibiting the subject person
26 from further participating in any manner in the conduct of the
27 business of the industrial loan company, except with the prior
28 consent of the commissioner:

29 (1) That it is necessary for the protection of the industrial loan
30 company or the interests of the industrial loan company's account
31 holders that the commissioner issue the order immediately, and

32 (2) (A) That any of the factors set forth in paragraphs (1) and
33 (2) of subdivision (b) and any of the factors set forth in paragraph
34 (3) of subdivision (c) are true with respect to the subject person;
35 or

36 (B) That any of the factors set forth in paragraphs (1), (2), and
37 (3) of subdivision (c), and the factor set forth in paragraph (3) of
38 subdivision (c) are true with respect to the subject person.

39 (e) (1) If the commissioner finds the following, the
40 commissioner may immediately issue an order suspending or

1 removing a subject person of an industrial loan company from his
2 or her office with the industrial loan company and prohibiting the
3 subject person from further participating in any manner in the
4 conduct of the business of the industrial loan company, except
5 with the prior consent of the commissioner.

6 (A) That the subject person has been charged in an indictment
7 issued by a grand jury or in an information, complaint, or similar
8 pleading issued by a United States attorney, district attorney, or
9 other governmental official or agency authorized to prosecute
10 crimes, with a crime which is punishable by imprisonment for a
11 term exceeding one year and which involves dishonesty or breach
12 of trust; and

13 (B) That the person's continuing to serve as a subject person of
14 the industrial loan company may pose a material threat to the
15 interest of the industrial loan company's account holders or may
16 threaten to materially impair public confidence in the industrial
17 loan company. In case the criminal proceedings are terminated
18 other than by a judgment of conviction the order shall be deemed
19 rescinded.

20 (2) If the commissioner finds the following, the commissioner
21 may immediately issue an order suspending or removing a subject
22 person of an industrial loan company or a former subject of an
23 industrial loan company, from his or her office, if any, with the
24 industrial loan company and prohibiting the person from further
25 participating in any manner in the conduct of the business of the
26 industrial loan company, except with the prior consent of the
27 industrial loan company:

28 (A) That the person has been finally convicted of a crime which
29 is punishable by imprisonment for a term exceeding one year and
30 which involves dishonesty or breach of trust; and

31 (B) That the person's continuing to serve or resumption of
32 service as a subject person of the industrial loan company may
33 pose a material threat to the interests of the industrial loan
34 company's account holders or may threaten to materially impair
35 public confidence in the industrial loan company.

36 (3) The fact that any subject person of an industrial loan
37 company charged with a crime involving dishonesty or breach of
38 trust is not finally convicted of that crime shall not preclude the
39 commissioner from issuing an order regarding the subject person
40 pursuant to other provisions of this division.

1 (f) Within 30 days after an order is issued pursuant to
2 subdivision (d) or (e), the person to whom the order is issued may
3 file an application for a hearing.

4 (g) Any person to whom an order is issued under subdivision
5 (b), (c), (d), or (e) may apply to the commissioner to modify or
6 rescind that order. The commissioner shall not grant that
7 application unless the commissioner finds that it is in the public
8 interest to do so and that it is reasonable to believe that the person
9 will, if and when he or she becomes a subject person of an
10 industrial loan company, comply with all applicable provisions of
11 this division and of any regulation or order issued thereunder.

12 (h) A hearing held pursuant to this section shall be private unless
13 the commissioner, in his or her discretion, after fully considering
14 the views of the parties, determines that a public hearing is
15 necessary to protect the public interest.

16 (i) (1) It is unlawful for any subject person of an industrial loan
17 company or former subject person of an industrial loan company
18 to whom an order is issued under subdivision (b), (c), (d), or (e)
19 to do any of the following, except with the prior consent of the
20 commissioner, so long as the order is effective:

21 (A) To serve or act as a director, officer, employee, or agent of
22 any industrial loan company.

23 (B) To vote any shares or other securities of an industrial loan
24 company having voting rights, for the election of any person as a
25 director of an industrial loan company.

26 (C) Directly or indirectly, to solicit, procure, or transfer or
27 attempt to transfer, or vote any proxy, consent, or authorization
28 with respect to any shares or other securities of any industrial loan
29 company having voting rights.

30 (D) Otherwise to participate in any manner in the conduct of
31 the business of any industrial loan company.

32 (2) Any person who violates paragraph (1) shall, upon
33 conviction, be punished by a fine of not more than ten thousand
34 dollars (\$10,000) or imprisoned ~~in the state prison pursuant to~~
35 ~~subdivision (h) of Section 1170 of the Penal Code~~, or in a county
36 jail not to exceed one year, or by both ~~such~~ that fine and
37 imprisonment.

38 (3) If the commissioner believes that any person has violated
39 paragraph (1), the commissioner may bring an action in a court of
40 competent jurisdiction petitioning the court to assess that person

1 a civil penalty in an amount as the commissioner may specify;
2 provided, however, that the amount of the civil penalty shall not
3 exceed two thousand five hundred dollars (\$2,500) for each
4 violation or, in the case of a continuing violation, two thousand
5 five hundred dollars (\$2,500) for each day for which the violation
6 continues.

7 In determining the amount of a civil penalty to be assessed under
8 this paragraph, the court shall consider the financial resources and
9 good faith of the person charged, the gravity of the violation, the
10 history of previous violations by the person, and such other factors
11 as in the opinion of the court may be relevant.

12 *SEC. 111. Section 18435 of the Financial Code is amended to*
13 *read:*

14 18435. Except as otherwise provided in this division, any
15 person who willfully violates any provision of this division, or
16 who willfully violates any rule or order adopted pursuant to this
17 division, shall, upon conviction, be punished by a fine of not more
18 than ten thousand dollars (\$10,000), by imprisonment in ~~the a~~
19 county jail for not more than one year or ~~in the state prison~~
20 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
21 by both that fine and imprisonment. However, no person may be
22 imprisoned for the violation of any rule or order unless he or she
23 had knowledge of the rule or order. Conviction under this section
24 shall not preclude the commissioner from exercising the authority
25 provided in Section 18349.5.

26 *SEC. 112. Section 22753 of the Financial Code is amended to*
27 *read:*

28 22753. Any person who willfully violates any provision of this
29 division or who willfully violates any rule or order adopted
30 pursuant to this division, shall, upon conviction, be punished by
31 a fine of not more than ten thousand dollars (\$10,000), by
32 imprisonment in a county jail for not more than one year or ~~in the~~
33 ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the*
34 *Penal Code*, or by both that fine and imprisonment. However, no
35 person may be imprisoned for the violation of any rule or order
36 unless he or she had knowledge of the rule or order. Conviction
37 under this section shall not preclude the commissioner from
38 exercising the authority in Section 22713.

39 *SEC. 113. Section 22780 of the Financial Code is amended to*
40 *read:*

22780. Any person who willfully violates any provision of this division, or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), by imprisonment in a county jail for not more than one year or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 22713.

SEC. 114. Section 31880 of the Financial Code is amended to read:

31880. Any person who violates any provision of this chapter shall upon conviction be fined not more than ten thousand dollars (\$10,000) or be imprisoned ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or in a county jail for not more than one year, or be punished by both ~~such~~ that fine and imprisonment.

SEC. 115. Section 50500 of the Financial Code is amended to read:

50500. Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

SEC. 116. Section 12004 of the Fish and Game Code is amended to read:

12004. (a) The punishment for a first conviction of a violation of Section 8685.5, 8685.6, 8685.7, or 8688 is a fine of not more than five thousand dollars (\$5,000), or imprisonment ~~in the a~~ county jail for a period not to exceed six months, or the revocation of any license issued pursuant to Sections 8032 to 8036, inclusive, or any combination of these penalties.

(b) The punishment for a second or subsequent conviction of a violation of Section 8685.5, 8685.6, 8685.7, or 8688, which offense occurred within five years of another offense which resulted in a conviction of Section 8685.5, 8685.6, 8685.7, or 8688 is a fine of not more than ten thousand dollars (\$10,000), or imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or imprisonment in the a county jail for a period not to exceed one year, or the revocation of any license issued pursuant to Sections 8032 to 8036, inclusive, or any combination of these penalties.

SEC. 117. Section 12005 of the Fish and Game Code is amended to read:

12005. (a) Notwithstanding Section 12000, and except as otherwise provided in subdivision (c), the punishment for each violation of Section 4758 shall include both of the following:

(1) A fine of two hundred fifty dollars (\$250) for each bear part. As used in this paragraph, "bear part" means an individual part or group of like parts of any bear that the defendant knowingly and unlawfully sells, purchases, or possesses for sale. For the purposes of this paragraph, claws, paws, or teeth from a single bear that are knowingly purchased, sold, or possessed for sale with the intent that they be delivered to a single end user shall be considered a single part.

(2) An additional fine of not more than five thousand dollars (\$5,000), imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or the in a county jail for not more than one year, or both the that fine and imprisonment.

(b) If the conviction is for the possession of two bear gall bladders and probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of 30 days shall be served in the a county jail.

(c) (1) The possession of three or more bear gall bladders is punishable by both of the following:

(A) The fine specified in paragraph (1) of subdivision (a).

(B) An additional fine of not more than ten thousand dollars (\$10,000), imprisonment in the a county jail for not more than one year, or both that fine and imprisonment.

(2) If probation is granted, or the execution or imposition of sentence is suspended, it shall be a condition thereof that a minimum term of three months shall be served in the a county jail.

(d) Consecutive sentences shall be imposed for separate violations of this section.

SEC. 118. Section 17701 of the Food and Agricultural Code is amended to read:

17701. A violation of Section 17551 shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code.

SEC. 119. Section 18932 of the Food and Agricultural Code is amended to read:

18932. Any person who is found guilty of violating any of the provisions of this chapter or the regulations promulgated under this chapter is subject to imprisonment ~~in the~~ a county jail for not more than one year or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine, but if the violation is committed after a conviction of such person under this section has become final, or the violation is committed with intent to defraud or mislead, the person shall be subject to imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or a fine of not more than ten thousand dollars (\$10,000), or both ~~such~~ that imprisonment and fine.

SEC. 120. Section 18933 of the Food and Agricultural Code is amended to read:

18933. Any person who, as principal or agent, employer or employee, adulterates any meat or meat food product or poultry product intended for sale as human food with the product of an animal which has died otherwise than by slaughter or the product of an animal which has not been slaughtered under inspection in accordance with this chapter, shall be guilty of a felony punishable by a fine of not less than ten thousand dollars (\$10,000), or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or both ~~such~~ that imprisonment and fine.

SEC. 121. Section 19440 of the Food and Agricultural Code is amended to read:

19440. Any person who is found guilty of violating any of the provisions of this chapter or the rules and regulations promulgated under this chapter is subject to imprisonment ~~in the~~ a county jail for not more than one year or a fine of not more than one thousand dollars (\$1,000), or both ~~such~~ that imprisonment and fine; but if the violation is committed after a conviction of such person under

1 this section has become final, or the violation is committed with
2 intent to defraud or mislead, the person shall be subject to
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170 of the Penal Code*, or a fine of not more than ten
5 thousand dollars (\$10,000), or both ~~such that~~ imprisonment and
6 fine.

7 *SEC. 122. Section 19441 of the Food and Agricultural Code*
8 *is amended to read:*

9 19441. Any person who, as principal or agent, employer or
10 employee, adulterates any other meat or meat food product intended
11 for human food with horsemeat or the product of an animal which
12 has died otherwise than by slaughter or the product of an animal
13 slaughtered for pet food in accordance with this chapter, or
14 represents horsemeat or pet food to be any other meat or meat food
15 product, shall be guilty of a felony punishable by a fine of not less
16 than ten thousand dollars (\$10,000), or by imprisonment ~~in the~~
17 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
18 *Penal Code*, or both.

19 *SEC. 123. Section 80174 of the Food and Agricultural Code*
20 *is amended to read:*

21 80174. A second conviction shall be punishable by a fine of
22 not less than three hundred dollars (\$300), nor more than five
23 thousand dollars (\$5,000), for each violation, by imprisonment in
24 a county jail for not more than one year, by imprisonment ~~in the~~
25 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
26 *Penal Code*, or by both that fine and imprisonment, and each
27 violation shall constitute a separate offense.

28 Upon the second conviction, all permits issued to the person
29 convicted shall be revoked and the permittee shall be required to
30 surrender any unused tags and seals or wood receipts to the issuing
31 agency and no new or additional permits shall be issued to the
32 permittee at any time in the future from the date of conviction.

33 *SEC. 123.5. Section 1195 of the Government Code is amended*
34 *to read:*

35 1195. Every officer of the State, or of any county, city, or
36 judicial district who accepts, keeps, retains or diverts for his own
37 use or the use of any other person any part of the salary or fees
38 allowed by law to his deputy, or other subordinate officer, is guilty
39 of a felony *punishable by imprisonment in the state prison for 16*
40 *months, or 2 or 3 years.*

1 *SEC. 124. Section 1368 of the Government Code is amended*
2 *to read:*

3 1368. Every person who, while taking and subscribing to the
4 oath or affirmation required by this chapter, states as true any
5 material matter which he or she knows to be false, is guilty of
6 perjury, and is punishable by imprisonment ~~in the state prison~~
7 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
8 two, three, or four years.

9 *SEC. 125. Section 1369 of the Government Code is amended*
10 *to read:*

11 1369. Every person having taken and subscribed to the oath
12 or affirmation required by this chapter, who while holding office,
13 advocates or becomes a member of any party or organization,
14 political or otherwise, that advocates the overthrow of the
15 government of the United States by force or violence or other
16 unlawful means, is guilty of a felony, and is punishable by
17 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
18 *Section 1170 of the Penal Code.*

19 *SEC. 126. Section 3108 of the Government Code is amended*
20 *to read:*

21 3108. Every person who, while taking and subscribing to the
22 oath or affirmation required by this chapter, states as true any
23 material matter which he or she knows to be false, is guilty of
24 perjury, and is punishable by imprisonment ~~in the state prison~~
25 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
26 two, three, or four years.

27 *SEC. 127. Section 3109 of the Government Code is amended*
28 *to read:*

29 3109. Every person having taken and subscribed to the oath
30 or affirmation required by this chapter, who, while in the employ
31 of, or service with, the state or any county, city, city and county,
32 state agency, public district, or disaster council or emergency
33 organization advocates or becomes a member of any party or
34 organization, political or otherwise, that advocates the overthrow
35 of the government of the United States by force or violence or
36 other unlawful means, is guilty of a felony, and is punishable by
37 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
38 *Section 1170 of the Penal Code.*

39 *SEC. 128. Section 5954 of the Government Code is amended*
40 *to read:*

1 5954. Any person who violates this chapter shall upon
2 conviction be fined not more than ten million dollars (\$10,000,000),
3 or imprisoned ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170 of the Penal Code* for five years, or be punished by
5 both that fine and imprisonment.

6 *SEC. 129. Section 6200 of the Government Code is amended*
7 *to read:*

8 6200. Every officer having the custody of any record, map, or
9 book, or of any paper or proceeding of any court, filed or deposited
10 in any public office, or placed in his or her hands for any purpose,
11 is punishable by imprisonment ~~in the state prison pursuant to~~
12 *subdivision (h) of Section 1170 of the Penal Code* for two, three,
13 or four years if, as to the whole or any part of the record, map,
14 book, paper, or proceeding, the officer willfully does or permits
15 any other person to do any of the following:

16 (a) Steal, remove, or secrete.

17 (b) Destroy, mutilate, or deface.

18 (c) Alter or falsify.

19 *SEC. 130. Section 6201 of the Government Code is amended*
20 *to read:*

21 6201. Every person not an officer referred to in Section 6200,
22 who is guilty of any of the acts specified in that section, is
23 punishable by imprisonment ~~in the state prison pursuant to~~
24 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
25 jail not exceeding one year, or by a fine not exceeding one thousand
26 dollars (\$1,000), or by both ~~such~~ that fine and imprisonment.

27 *SEC. 131. Section 8670.64 of the Government Code is amended*
28 *to read:*

29 8670.64. (a) A person who commits any of the following acts,
30 shall, upon conviction, be punished by imprisonment in a county
31 jail for not more than one year or by imprisonment ~~in the state~~
32 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
33 *Code:*

34 (1) Except as provided in Section 8670.27, knowingly fails to
35 follow the direction or orders of the administrator in connection
36 with an oil spill.

37 (2) Knowingly fails to notify the Coast Guard that a vessel is
38 disabled within one hour of the disability and the vessel, while
39 disabled, causes a discharge of oil which enters marine waters.
40 For the purposes of this paragraph, "vessel" means a vessel, as

1 defined in Section 21 of the Harbors and Navigation Code, of 300
2 gross registered tons or more.

3 (3) Knowingly engages in or causes the discharge or spill of oil
4 into marine waters, or a person who reasonably should have known
5 that he or she was engaging in or causing the discharge or spill of
6 oil into marine waters, unless the discharge is authorized by the
7 United States, the state, or another agency with appropriate
8 jurisdiction.

9 (4) Knowingly fails to begin cleanup, abatement, or removal of
10 spilled oil as required in Section 8670.25.

11 (b) The court shall also impose upon a person convicted of
12 violating subdivision (a), a fine of not less than five thousand
13 dollars (\$5,000) or more than five hundred thousand dollars
14 (\$500,000) for each violation. For purposes of this subdivision,
15 each day or partial day that a violation occurs is a separate
16 violation.

17 (c) (1) A person who knowingly does any of the acts specified
18 in paragraph (2) shall, upon conviction, be punished by a fine of
19 not less than two thousand five hundred dollars (\$2,500) or more
20 than two hundred fifty thousand dollars (\$250,000), or by
21 imprisonment in a county jail for not more than one year, or by
22 both the fine and imprisonment. Each day or partial day that a
23 violation occurs is a separate violation. If the conviction is for a
24 second or subsequent violation of this subdivision, the person shall
25 be punished by imprisonment ~~in the state prison pursuant to~~
26 *subdivision (h) of Section 1170 of the Penal Code*, or in a county
27 jail for not more than one year, or by a fine of not less than five
28 thousand dollars (\$5,000) or more than five hundred thousand
29 dollars (\$500,000), or by both ~~the~~ *that* fine and imprisonment:

30 (2) The acts subject to this subdivision are all of the following:

31 (A) Failing to notify the California Emergency Management
32 Agency in violation of Section 8670.25.5.

33 (B) Knowingly making a false or misleading marine oil spill
34 report to the California Emergency Management Agency.

35 (C) Continuing operations for which an oil spill contingency
36 plan is required without an oil spill contingency plan approved
37 pursuant to Article 5 (commencing with Section 8670.28).

38 (D) Except as provided in Section 8670.27, knowingly failing
39 to follow the material provisions of an applicable oil spill
40 contingency plan.

1 *SEC. 132. Section 9056 of the Government Code is amended*
2 *to read:*

3 9056. Any person who shall secure through his influence,
4 knowingly exerted for that purpose, the introduction of any bill,
5 resolution or amendment into the State Legislature and shall
6 thereafter solicit or accept from any person other than a person
7 upon whose request he secured such introduction, any pay or other
8 valuable consideration for preventing or attempting to prevent, the
9 enactment or adoption of such measure, while it retains its original
10 purpose, shall be guilty of a crime and upon conviction thereof
11 shall be punishable by a fine of not exceeding ten thousand dollars
12 (\$10,000) or by imprisonment in ~~the~~ a county jail for not more
13 than one year or ~~in the state prison pursuant to subdivision (h) of~~
14 Section 1170 of the Penal Code, or by both ~~such~~ that fine and
15 imprisonment.

16 *SEC. 133. Section 27443 of the Government Code is amended*
17 *to read:*

18 27443. Every person holding the office of public administrator,
19 public guardian, or public conservator and any deputy or agent of
20 such officer is guilty of a crime who:

21 (a) Purchases, directly or indirectly, the property of any estate
22 or a claim against any estate administered by any public
23 ~~administrator~~ administrator, public guardian, or public conservator
24 in his official capacity, or

25 (b) Acts upon any transaction or expenditure in connection with
26 the administration of an estate by the public administrator, public
27 guardian, or public conservator in his official capacity, when he
28 has a financial interest in such transaction or expenditure, or,
29 having knowledge of such interest, is associated in business with
30 anyone who has such an interest.

31 Subdivisions (a) and (b) shall not be applicable to any act
32 specifically authorized by court order.

33 Any violation of this section is punishable by a fine not
34 exceeding one thousand dollars (\$1,000), or by imprisonment in
35 the county jail not exceeding one year, or by both such fine and
36 imprisonment, or by imprisonment ~~in the state prison pursuant to~~
37 subdivision (h) of Section 1170 of the Penal Code. Upon conviction
38 of this section a person forfeits his office. This section is not
39 intended to preclude prosecution under any other provisions of the
40 criminal law which are otherwise applicable.

1 *SEC. 134. Section 51018.7 of the Government Code is amended*
2 *to read:*

3 51018.7. (a) Any person who willfully and knowingly violates
4 any provision of this chapter or a regulation issued pursuant thereto
5 shall, upon conviction, be subject, for each offense, to a fine of
6 not more than twenty-five thousand dollars (\$25,000),
7 imprisonment in a county jail for not more than one year,
8 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
9 *Section 1170 of the Penal Code*, or by both that fine and
10 imprisonment.

11 (b) Any person who willfully and knowingly defaces, damages,
12 removes, or destroys any pipeline sign or right-of-way marker
13 required by federal or state law or regulation shall, upon conviction,
14 be subject, for each offense, to a fine of not more than five thousand
15 dollars (\$5,000), imprisonment in a county jail for not more than
16 one year, or by both that fine and imprisonment.

17 *SEC. 135. Section 264 of the Harbors and Navigation Code is*
18 *amended to read:*

19 264. (a) A captain or other person having charge of any steam
20 vessel used for the conveyance of passengers, or of its boilers and
21 engines, who, from ignorance or gross neglect, or for the purpose
22 of excelling any other boat in speed, creates, or allows to be
23 created, such an undue quantity of steam as to burst or break the
24 boiler, or any apparatus or machinery connected with the boiler,
25 by which bursting or breaking human life is endangered, is guilty
26 of a felony.

27 (b) Notwithstanding any other provision of law, a person found
28 guilty of a felony violation of this section shall be subject to a fine
29 not to exceed five thousand dollars (\$5,000) or ~~imprisonment in~~
30 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
31 *Penal Code* for 16 months, two or three years, or both that fine
32 and imprisonment.

33 *SEC. 136. Section 310 of the Harbors and Navigation Code is*
34 *amended to read:*

35 310. Notwithstanding any other provision of law, a person
36 found guilty of a felony violation as provided in this chapter shall
37 be subject to a fine not to exceed five thousand dollars (\$5,000)
38 or ~~imprisonment in the state prison pursuant to subdivision (h) of~~
39 *Section 1170 of the Penal Code* for 16 months, two or three years,
40 or both that fine and imprisonment.

1 *SEC. 137. Section 668 of the Harbors and Navigation Code is*
2 *amended to read:*

3 668. (a) Any person who violates subdivision (c) of Section
4 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or
5 754, or any regulations adopted pursuant thereto, or any regulation
6 adopted pursuant to Section 655.3 relating to vessel equipment
7 requirements, is guilty of an infraction, punishable by a fine of not
8 more than two hundred fifty dollars (\$250).

9 (b) (1) Any person who violates Section 655.2, or any regulation
10 adopted pursuant thereto, or, except as provided in subdivision
11 (a), any regulation adopted pursuant to Section 655.3, is guilty of
12 a misdemeanor and shall be punished by a fine of not more than
13 one hundred dollars (\$100) or imprisonment in ~~the~~ a county jail
14 for not more than five days, or by both that fine and imprisonment,
15 for each violation.

16 (2) Any person who violates subdivision (a) or (b) of Section
17 658 is guilty of a misdemeanor and shall be punished by a fine of
18 not more than two hundred dollars (\$200) for each violation.

19 (3) Any person who violates subdivision (d) of Section 652,
20 Section 652.5, subdivision (a) of Section 655, Section 655.05, 656,
21 or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or
22 665, or any rules and regulations adopted pursuant to subdivision
23 (b) or (c) of Section 660, is guilty of a misdemeanor and shall be
24 punished by a fine of not more than one thousand dollars (\$1,000)
25 or imprisonment in ~~the~~ a county jail for not more than six months,
26 or by both that fine and imprisonment, for each violation.

27 (c) (1) Any person convicted of a violation of Section 656.2 or
28 656.3 shall be punished by a fine of not less than one thousand
29 dollars (\$1,000) or more than ten thousand dollars (\$10,000), or
30 by imprisonment in ~~the state prison~~ pursuant to subdivision (h) of
31 Section 1170 of the Penal Code, or in ~~the~~ a county jail for not more
32 than one year, or by both that fine and imprisonment.

33 (2) In imposing the minimum fine required by this subdivision,
34 the court shall take into consideration the defendant's ability to
35 pay the fine and, in the interest of justice for reasons stated in the
36 record, may reduce the amount of that minimum fine to less than
37 the amount otherwise required by this subdivision.

38 (d) Any person convicted of a violation of Section 658.5 shall
39 be punished by a fine of not more than one hundred dollars (\$100).

(e) Any person convicted of a first violation of subdivision (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the *a* county jail for not more than six months, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program, in addition to imposing any penalties required by this code. In order to enable all persons to participate in licensed programs, every person referred to a program licensed pursuant to Section 11836 of the Health and Safety Code shall pay that program's costs commensurate with that person's ability to pay as determined by Section 11837.4 of the Health and Safety Code.

(f) Any person convicted of a second or subsequent violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of the first conviction of any of those subdivisions or subdivision (f) of Section 655, or any person convicted of a violation of subdivision (b), (c), (d), or (e) of Section 655 within seven years of a separate conviction of subdivision (a) or (b) of Section 192.5 of the Penal Code, or a separate conviction of Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment in the *a* county jail for not more than one year, or by both that fine and imprisonment. If probation is granted, the court, as a condition of probation, may require the person to do either of the following, if available in the county of the person's residence or employment:

(1) Participate, for at least 18 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code.

(2) Participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court,

1 in a program licensed pursuant to Chapter 9 (commencing with
2 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
3 Code. A person ordered to treatment pursuant to this paragraph
4 shall apply to the court or to a board of review, as designated by
5 the court, at the conclusion of the program to obtain the court's
6 order of satisfaction. Only upon the granting of that order of
7 satisfaction by the court may the program issue its certificate of
8 successful completion. A failure to obtain an order of satisfaction
9 at the conclusion of the program is a violation of probation. In
10 order to enable all required persons to participate, each person
11 shall pay the program costs commensurate with the person's ability
12 to pay as determined pursuant to Section 11837.4 of the Health
13 and Safety Code. No condition of probation required pursuant to
14 this paragraph is a basis for reducing any other probation
15 requirement.

16 (g) Any person convicted of a violation of subdivision (f) of
17 Section 655 shall be punished by imprisonment ~~in the state prison~~
18 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
19 ~~in the a~~ county jail for not less than 90 days or more than one year,
20 and by a fine of not less than two hundred fifty dollars (\$250) or
21 more than five thousand dollars (\$5,000). If probation is granted,
22 the court, as a condition of probation, may require the person to
23 participate in, and successfully complete, a program licensed
24 pursuant to Chapter 9 (commencing with Section 11836) of Part
25 2 of Division 10.5 of the Health and Safety Code, if available in
26 the person's county of residence or employment, as designated by
27 the court. In order to enable all required persons to participate,
28 each person shall pay the program costs commensurate with the
29 person's ability to pay as determined pursuant to Section 11837.4
30 of the Health and Safety Code.

31 (h) (1) If any person is convicted of a violation of subdivision
32 (f) of Section 655 within seven years of a separate conviction of
33 a violation of subdivision (b), (c), (d), or (e) of Section 655 and is
34 granted probation, the court shall impose as a condition of
35 probation that the person be confined ~~in the a~~ county jail for not
36 less than five days or more than one year and pay a fine of not less
37 than two hundred fifty dollars (\$250) or more than five thousand
38 dollars (\$5,000).

39 (2) If any person is convicted of a violation of subdivision (f)
40 of Section 655 within seven years of a separate conviction of a

1 violation of subdivision (f) of Section 655, of subdivision (a) or
2 (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153
3 of the Vehicle Code or Section 191.5 or subdivision (a) of Section
4 192.5 of the Penal Code, when the separate conviction resulted
5 from the operation of a motor vehicle, and is granted probation,
6 the court shall impose as a condition of probation that the person
7 be confined in ~~the~~ a county jail for not less than 90 days or more
8 than one year, and pay a fine of not less than two hundred fifty
9 dollars (\$250) or more than five thousand dollars (\$5,000), and
10 the court, as a condition of probation, may order that the person
11 participate in a manner satisfactory to the court, in a program
12 licensed pursuant to Chapter 9 (commencing with Section 11836)
13 of Part 2 of Division 10.5 of the Health and Safety Code, if
14 available in the county of the person's residence or employment.
15 In order to enable all required persons to participate, each person
16 shall pay the program costs commensurate with the person's ability
17 to pay as determined pursuant to Section 11837.4 of the Health
18 and Safety Code.

19 (i) The court shall not absolve a person who is convicted of a
20 violation of subdivision (f) of Section 655 within seven years of
21 a separate conviction of a violation of subdivision (b), (c), (d), (e),
22 or (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of
23 the Penal Code, or Section 23152 or 23153 of the Vehicle Code
24 or Section 191.5 or subdivision (a) of Section 192.5 of the Penal
25 Code, when the separate conviction resulted from the operation
26 of a motor vehicle, from the minimum time in confinement
27 provided in this section and a fine of at least two hundred fifty
28 dollars (\$250), except as provided in subdivision (h).

29 (j) Except in unusual cases where the interests of justice demand
30 an exception, the court shall not strike a separate conviction of an
31 offense under subdivision (b), (c), (d), (e), or (f) of Section 655 or
32 of subdivision (a) or (b) of Section 192.5 of the Penal Code, or
33 Section 23152 or 23153 of the Vehicle Code or Section 191.5 or
34 subdivision (a) of Section 192.5 of the Penal Code, when the
35 separate conviction resulted from the operation of a motor vehicle,
36 for purposes of sentencing in order to avoid imposing, as part of
37 the sentence or as a term of probation, the minimum time in
38 confinement and the minimum fine, as provided in this section.
39 When a separate conviction is stricken by the court for purposes
40 of sentencing, the court shall specify the reason or reasons for the

1 striking order. On appeal by the people from an order striking a
2 separate conviction, it shall be conclusively presumed that the
3 order was made only for the reasons specified in the order, and
4 the order shall be reversed if there is no substantial basis in the
5 record for any of those reasons.

6 (k) A person who flees the scene of the crime after committing
7 a violation of subdivision (a), (b), or (c) of Section 192.5 of the
8 Penal Code shall be subject to subdivision (c) of Section 20001 of
9 the Vehicle Code.

10 (l) Any person who violates Section 654.3 is guilty of an
11 infraction punishable by a fine of not more than five hundred
12 dollars (\$500) for each separate violation.

13 *SEC. 138. Section 1390 of the Health and Safety Code is*
14 *amended to read:*

15 1390. Any person who willfully violates any provision of this
16 chapter or of any rule or order thereunder shall upon conviction
17 be fined not more than ten thousand dollars (\$10,000) or
18 imprisoned ~~in the state prison~~ pursuant to subdivision (h) of Section
19 1170 of the Penal Code, or in a county jail for not more than one
20 year, or be punished by both such fine and imprisonment, but no
21 person may be imprisoned for the violation of any rule or order if
22 it is proven that such person had no knowledge of the rule or order.

23 *SEC. 139. Section 1522.01 of the Health and Safety Code is*
24 *amended to read:*

25 1522.01. (a) Any person required to be registered as a sex
26 offender under Section 290 of the Penal Code shall disclose this
27 fact to the licensee of a community care facility before becoming
28 a client of that facility. A community care facility client who fails
29 to disclose to the licensee his or her status as a registered sex
30 offender shall be guilty of a misdemeanor punishable pursuant to
31 subdivision (a) of Section 1540. The community care facility
32 licensee shall not be liable if the client who is required to register
33 as a sex offender fails to disclose this fact to the community care
34 facility licensee. However, this immunity does not apply if the
35 community care facility licensee knew that the client was required
36 to register as a sex offender.

37 (b) Any person or persons operating, pursuant to this chapter,
38 a community care facility that accepts as a client an individual
39 who is required to be registered as a sex offender under Section
40 290 of the Penal Code shall confirm or deny whether any client

1 of the facility is a registered sex offender in response to any person
2 who inquires whether any client of the facility is a registered sex
3 offender and who meets any of the following criteria:

4 (1) The person is the parent, family member, or guardian of a
5 child residing within a one-mile radius of the facility.

6 (2) The person occupies a personal residence within a one-mile
7 radius of the facility.

8 (3) The person operates a business within a one-mile radius of
9 the facility.

10 (4) The person is currently a client within the facility or a family
11 member of a client within the facility.

12 (5) The person is applying for placement in the facility, or
13 placement of a family member in the facility.

14 (6) The person is arranging for a client to be placed in the
15 facility.

16 (7) The person is a law enforcement officer.

17 If the community care facility licensee indicates a client is a
18 registered sex offender, the interested person may describe physical
19 characteristics of a client and the facility shall disclose that client's
20 name upon request, if the physical description matches the client.
21 The facility shall also advise the interested person that information
22 about registered sex offenders is available to the public via the
23 Internet Web site maintained by the Department of Justice pursuant
24 to Section 290.46 of the Penal Code.

25 (c) Any person who uses information disclosed pursuant to this
26 section to commit a felony shall be punished, in addition and
27 consecutive to, any other punishment, by a five-year term of
28 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
29 *Section 1170 of the Penal Code.*

30 (d) Any person who uses information disclosed pursuant to this
31 section to commit a misdemeanor shall be subject to, in addition
32 to any other penalty or fine imposed, a fine of not less than five
33 hundred dollars (\$500) and not more than one thousand dollars
34 (\$1,000).

35 (e) Except as authorized under another provision of law, or to
36 protect a child, use of any of the information disclosed pursuant
37 to this section for the purpose of applying for, obtaining, or denying
38 any of the following, is prohibited:

39 (1) Health insurance.

40 (2) Insurance.

1 (3) Loans.

2 (4) Credit.

3 (5) Employment.

4 (6) Education, scholarships, or fellowships.

5 (7) Benefits, privileges, or services provided by any business
6 establishment.

7 (8) Housing or accommodations.

8 (f) Any use of information disclosed pursuant to this section for
9 purposes other than those provided by subdivisions (a) and (b)
10 shall make the user liable for the actual damages, and any amount
11 that may be determined by a jury or a court sitting without a jury,
12 not exceeding three times the amount of actual damage, and not
13 less than two hundred fifty dollars (\$250), and attorney's fees,
14 exemplary damages, or a civil penalty not exceeding twenty-five
15 thousand dollars (\$25,000).

16 (g) Whenever there is reasonable cause to believe that any
17 person or group of persons is engaged in a pattern or practice of
18 misuse of the information disclosed pursuant to this section, the
19 Attorney General, any district attorney, or city attorney, or any
20 person aggrieved by the misuse of that information is authorized
21 to bring a civil action in the appropriate court requesting preventive
22 relief, including an application for a permanent or temporary
23 injunction, restraining order, or other order against the person or
24 group of persons responsible for the pattern or practice of misuse.
25 The foregoing remedies shall be independent of any other remedies
26 or procedures that may be available to an aggrieved party under
27 other provisions of law, including Part 2 (commencing with Section
28 43) of Division 1 of the Civil Code.

29 (h) The civil and criminal penalty moneys collected pursuant
30 to this section shall be transferred to the Community Care
31 Licensing Division of the State Department of Social Services,
32 upon appropriation by the Legislature.

33 *SEC. 140. Section 1621.5 of the Health and Safety Code is*
34 *amended to read:*

35 1621.5. (a) It is a felony punishable by imprisonment in the
36 state prison pursuant to subdivision (h) of Section 1170 of the
37 Penal Code for two, four, or six years, for any person to donate
38 blood, body organs or other tissue, semen to any medical center
39 or semen bank that receives semen for purposes of artificial
40 insemination, or breast milk to any medical center or breast milk

1 bank that receives breast milk for purposes of distribution, whether
2 he or she is a paid or a volunteer donor, who knows that he or she
3 has acquired ~~immune deficiency~~ *immunodeficiency* syndrome
4 (*AIDS*), as diagnosed by a physician and surgeon, or who knows
5 that he or she has tested reactive to HIV. This section shall not
6 apply to any person who is mentally incompetent or who self-defers
7 his or her blood at a blood bank or plasma center pursuant to
8 subdivision (b) of Section 1603.3 or who donates his or her blood
9 for purposes of an autologous donation.

10 (b) In a criminal investigation for a violation of this section,
11 no person shall disclose the results of a blood test to detect the
12 etiologic agent of AIDS or antibodies to that agent to any officer,
13 employee, or agent of a state or local agency or department unless
14 the test results are disclosed as otherwise required by law pursuant
15 to any one of the following:

16 (1) A search warrant issued pursuant to Section 1524 of the
17 Penal Code.

18 (2) A judicial subpoena or subpoena duces tecum issued and
19 served in compliance with Chapter 2 (commencing with Section
20 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

21 (3) An order of a court.

22 (c) For purposes of this section, “blood” means “human whole
23 blood” and “human whole blood derivatives,” as defined for
24 purposes of this chapter and includes “blood components,” as
25 defined in subdivision (k) of Section 1603.1.

26 *SEC. 141. Section 7051 of the Health and Safety Code is*
27 *amended to read:*

28 7051. Every person who removes any part of any human
29 remains from any place where it has been interred, or from any
30 place where it is deposited while awaiting interment or cremation,
31 with intent to sell it or to dissect it, without authority of law, or
32 written permission of the person or persons having the right to
33 control the remains under Section 7100, or with malice or
34 wantonness, has committed a public offense that is punishable by
35 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
36 *Section 1170 of the Penal Code.*

37 This section shall not prohibit the removal of foreign materials,
38 pacemakers, or prostheses from cremated remains by an employee
39 of a licensed crematory prior to final processing of ashes. Dental
40 gold or silver, jewelry, or mementos, to the extent that they can

1 be identified, may be removed by the employee prior to final
2 processing if the equipment is such that it will not process these
3 materials. However, any dental gold and silver, jewelry, or
4 mementos that are removed shall be returned to the urn or cremated
5 remains container, unless otherwise directed by the person or
6 persons having the right to control the disposition.

7 *SEC. 142. Section 7051.5 of the Health and Safety Code is*
8 *amended to read:*

9 7051.5. Every person who removes or possesses dental gold
10 or silver, jewelry, or mementos from any human remains without
11 specific written permission of the person or persons having the
12 right to control those remains under Section 7100 is punishable
13 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
14 Section 1170 of the Penal Code. The fact that residue and any
15 unavoidable dental gold or dental silver, or other precious metals
16 remain in the cremation chamber or other equipment or any
17 container used in a prior cremation is not a violation of this section.

18 *SEC. 143. Section 8113.5 of the Health and Safety Code is*
19 *amended to read:*

20 8113.5. (a) Except with the express written permission of the
21 person entitled to control the disposition of the remains, or in the
22 case of a double burial consented to by both parties, no person
23 shall knowingly or willfully inter the remains of more than one
24 body in a single plot, or place a casket or other human remains in
25 an already occupied grave.

26 (b) Violation of subdivision (a) is a crime punishable as follows:

27 (1) A first offense, or a second offense not committed within
28 a year of the first, is punishable as a misdemeanor by imprisonment
29 ~~in the a~~ county jail not exceeding one year.

30 (2) A second offense committed within a year of the first
31 offense is punishable as a misdemeanor or a felony by
32 imprisonment ~~in the a~~ county jail not exceeding one year, or ~~in~~
33 ~~state prison~~ pursuant to subdivision (h) of Section 1170 of the
34 Penal Code.

35 (3) A third or subsequent offense shall be punishable as a felony
36 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
37 Section 1170 of the Penal Code.

38 *SEC. 144. Section 8785 of the Health and Safety Code is*
39 *amended to read:*

8785. Any person, partnership, or corporation administering, managing, or having responsibility for endowment care or special care funds who violates the provisions of this chapter relating to the collection, investment, or use of those funds shall be punished either by imprisonment in ~~the a~~ county jail for a period not exceeding six months or by fine not exceeding five hundred dollars (\$500), or by both such imprisonment and fine, or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years. If the violator is a cemetery licensee or the holder of a certificate of authority, he, she, or it shall be subject to disciplinary action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of the Business and Professions Code.

SEC. 145. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

- (1) Phenyl-2-propanone.
- (2) Methylamine.
- (3) Ethylamine.
- (4) D-lysergic acid.
- (5) Ergotamine tartrate.
- (6) Diethyl malonate.
- (7) Malonic acid.
- (8) Ethyl malonate.
- (9) Barbituric acid.
- (10) Piperidine.
- (11) N-acetylanthranilic acid.
- (12) Pyrrolidine.
- (13) Phenylacetic acid.
- (14) Anthranilic acid.
- (15) Morpholine.
- (16) Ephedrine.
- (17) Pseudoephedrine.
- (18) Norpseudoephedrine.
- (19) Phenylpropanolamine.
- (20) Propionic anhydride.

- 1 (21) Isosafrole.
- 2 (22) Safrole.
- 3 (23) Piperonal.
- 4 (24) Thionylchloride.
- 5 (25) Benzyl cyanide.
- 6 (26) Ergonovine maleate.
- 7 (27) N-methylephedrine.
- 8 (28) N-ethylephedrine.
- 9 (29) N-methylpseudoephedrine.
- 10 (30) N-ethylpseudoephedrine.
- 11 (31) Chloroephedrine.
- 12 (32) Chloropseudoephedrine.
- 13 (33) Hydriodic acid.
- 14 (34) Gamma-butyrolactone, including butyrolactone;
15 butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro;
16 dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide;
17 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone;
18 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone
19 with Chemical Abstract Service number (96-48-0).
- 20 (35) 1,4-butanediol, including butanediol; butane-1,4-diol;
21 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane;
22 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene
23 1,4-diol with Chemical Abstract Service number (110-63-4).
- 24 (36) Red phosphorus, including white phosphorus,
25 hypophosphorous acid and its salts, ammonium hypophosphite,
26 calcium hypophosphite, iron hypophosphite, potassium
27 hypophosphite, manganese hypophosphite, magnesium
28 hypophosphite, sodium hypophosphite, and phosphorous acid and
29 its salts.
- 30 (37) Iodine or tincture of iodine.
- 31 (38) Any of the substances listed by the Department of Justice
32 in regulations promulgated pursuant to subdivision (b).
- 33 (b) The Department of Justice may adopt rules and regulations
34 in accordance with Chapter 3.5 (commencing with Section 11340)
35 of Part 1 of Division 3 of Title 2 of the Government Code that add
36 substances to subdivision (a) if the substance is a precursor to a
37 controlled substance and delete substances from subdivision (a).
38 However, no regulation adding or deleting a substance shall have
39 any effect beyond March 1 of the year following the calendar year
40 during which the regulation was adopted.

1 (c) (1) (A) Any manufacturer, wholesaler, retailer, or other
2 person or entity in this state, prior to selling, transferring, or
3 otherwise furnishing any substance specified in subdivision (a) to
4 any person or business entity in this state or any other state, shall
5 require (A) a letter of authorization from that person or business
6 entity that includes the currently valid business license number or
7 federal Drug Enforcement Administration (DEA) registration
8 number, the address of the business, and a full description of how
9 the substance is to be used, and (B) proper identification from the
10 purchaser. The manufacturer, wholesaler, retailer, or other person
11 or entity in this state shall retain this information in a readily
12 available manner for three years. The requirement for a full
13 description of how the substance is to be used does not require the
14 person or business entity to reveal their chemical processes that
15 are typically considered trade secrets and proprietary information.

16 (B) For the purposes of this paragraph, “proper identification”
17 for in-state or out-of-state purchasers includes two or more of the
18 following: federal tax identification number; seller’s permit
19 identification number; city or county business license number;
20 license issued by the California Department of Health Services;
21 registration number issued by the Federal Drug Enforcement
22 Administration; precursor business permit number issued by the
23 Bureau of Narcotic Enforcement of the California Department of
24 Justice; driver’s license; or other identification issued by a state.

25 (2) (A) Any manufacturer, wholesaler, retailer, or other person
26 or entity in this state that exports a substance specified in
27 subdivision (a) to any person or business entity located in a foreign
28 country shall, on or before the date of exportation, submit to the
29 Department of Justice a notification of that transaction, which
30 notification shall include the name and quantity of the substance
31 to be exported and the name, address, and, if assigned by the
32 foreign country or subdivision thereof, business identification
33 number of the person or business entity located in a foreign country
34 importing the substance.

35 (B) The department may authorize the submission of the
36 notification on a monthly basis with respect to repeated, regular
37 transactions between an exporter and an importer involving a
38 substance specified in subdivision (a), if the department determines
39 that a pattern of regular supply of the substance exists between the

1 exporter and importer and that the importer has established a record
2 of utilization of the substance for lawful purposes.

3 (d) (1) Any manufacturer, wholesaler, retailer, or other person
4 or entity in this state that sells, transfers, or otherwise furnishes a
5 substance specified in subdivision (a) to a person or business entity
6 in this state or any other state shall, not less than 21 days prior to
7 delivery of the substance, submit a report of the transaction, which
8 includes the identification information specified in subdivision
9 (c), to the Department of Justice. The Department of Justice may
10 authorize the submission of the reports on a monthly basis with
11 respect to repeated, regular transactions between the furnisher and
12 the recipient involving the substance or substances if the
13 Department of Justice determines that a pattern of regular supply
14 of the substance or substances exists between the manufacturer,
15 wholesaler, retailer, or other person or entity that sells, transfers,
16 or otherwise furnishes the substance or substances and the recipient
17 of the substance or substances, and the recipient has established a
18 record of utilization of the substance or substances for lawful
19 purposes.

20 (2) The person selling, transferring, or otherwise furnishing any
21 substance specified in subdivision (a) shall affix his or her signature
22 or otherwise identify himself or herself as a witness to the
23 identification of the purchaser or purchasing individual, and shall,
24 if a common carrier is used, maintain a manifest of the delivery
25 to the purchaser for three years.

26 (e) This section shall not apply to any of the following:

27 (1) Any pharmacist or other authorized person who sells or
28 furnishes a substance upon the prescription of a physician, dentist,
29 podiatrist, or veterinarian.

30 (2) Any physician, dentist, podiatrist, or veterinarian who
31 administers or furnishes a substance to his or her patients.

32 (3) Any manufacturer or wholesaler licensed by the California
33 State Board of Pharmacy that sells, transfers, or otherwise furnishes
34 a substance to a licensed pharmacy, physician, dentist, podiatrist,
35 or veterinarian, or a retail distributor as defined in subdivision (h),
36 provided that the manufacturer or wholesaler submits records of
37 any suspicious sales or transfers as determined by the Department
38 of Justice.

1 (4) Any analytical research facility that is registered with the
2 federal Drug Enforcement Administration of the United States
3 Department of Justice.

4 (5) A state-licensed health care facility that administers or
5 furnishes a substance to its patients.

6 (6) (A) Any sale, transfer, furnishing, or receipt of any product
7 that contains ephedrine, pseudoephedrine, norpseudoephedrine,
8 or phenylpropanolamine and which is lawfully sold, transferred,
9 or furnished over the counter without a prescription pursuant to
10 the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et
11 seq.) or regulations adopted thereunder. However, this section
12 shall apply to preparations in solid or liquid dosage form, except
13 pediatric liquid forms, as defined, containing ephedrine,
14 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine
15 where the individual transaction involves more than three packages
16 or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine,
17 or phenylpropanolamine.

18 (B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or
19 phenylpropanolamine product subsequently removed from
20 exemption pursuant to Section 814 of Title 21 of the United States
21 Code shall similarly no longer be exempt from any state reporting
22 or permitting requirement, unless otherwise reinstated pursuant to
23 subdivision (d) or (e) of Section 814 of Title 21 of the United States
24 Code as an exempt product.

25 (7) The sale, transfer, furnishing, or receipt of any betadine or
26 povidone solution with an iodine content not exceeding 1 percent
27 in containers of eight ounces or less, or any tincture of iodine not
28 exceeding 2 percent in containers of one ounce or less, that is sold
29 over the counter.

30 (8) Any transfer of a substance specified in subdivision (a) for
31 purposes of lawful disposal as waste.

32 (f) (1) Any person specified in subdivision (a) or (d) who does
33 not submit a report as required by that subdivision or who
34 knowingly submits a report with false or fictitious information
35 shall be punished by imprisonment in a county jail not exceeding
36 six months, by a fine not exceeding five thousand dollars (\$5,000),
37 or by both the fine and imprisonment.

38 (2) Any person specified in subdivision (a) or (d) who has
39 previously been convicted of a violation of paragraph (1) shall,
40 upon a subsequent conviction thereof, be punished by

1 imprisonment in the state prison pursuant to subdivision (h) of
2 Section 1170 of the Penal Code, or by imprisonment in a county
3 jail not exceeding one year, by a fine not exceeding one hundred
4 thousand dollars (\$100,000), or by both the fine and imprisonment.

5 (g) (1) Except as otherwise provided in subparagraph (A) of
6 paragraph (6) of subdivision (e), it is unlawful for any
7 manufacturer, wholesaler, retailer, or other person to sell, transfer,
8 or otherwise furnish a substance specified in subdivision (a) to a
9 person under 18 years of age.

10 (2) Except as otherwise provided in subparagraph (A) of
11 paragraph (6) of subdivision (e), it is unlawful for any person under
12 18 years of age to possess a substance specified in subdivision (a).

13 (3) Notwithstanding any other law, it is unlawful for any retail
14 distributor to (i) sell in a single transaction more than three
15 packages of a product that he or she knows to contain ephedrine,
16 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
17 or (ii) knowingly sell more than nine grams of ephedrine,
18 pseudoephedrine, norpseudoephedrine, or phenylpropanolamine,
19 other than pediatric liquids as defined. Except as otherwise
20 provided in this section, the three package per transaction limitation
21 or nine gram per transaction limitation imposed by this paragraph
22 shall apply to any product that is lawfully sold, transferred, or
23 furnished over the counter without a prescription pursuant to the
24 federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.),
25 or regulations adopted thereunder, unless exempted from the
26 requirements of the federal Controlled Substances Act by the
27 federal Drug Enforcement Administration pursuant to Section 814
28 of Title 21 of the United States Code.

29 (4) (A) A first violation of this subdivision is a misdemeanor.

30 (B) Any person who has previously been convicted of a violation
31 of this subdivision shall, upon a subsequent conviction thereof, be
32 punished by imprisonment in a county jail not exceeding one year,
33 by a fine not exceeding ten thousand dollars (\$10,000), or by both
34 the fine and imprisonment.

35 (h) For the purposes of this article, the following terms have
36 the following meanings:

37 (1) "Drug store" is any entity described in Code 5912 of the
38 Standard Industrial Classification (SIC) Manual published by the
39 United States Office of Management and Budget, 1987 edition.

(2) “General merchandise store” is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) “Grocery store” is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) “Pediatric liquid” means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) “Retail distributor” means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. “Retail distributor” includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) “Sale for personal use” means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). “Sale for personal use” also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

1 *SEC. 146. Section 11100.1 of the Health and Safety Code is*
2 *amended to read:*

3 11100.1. (a) Any manufacturer, wholesaler, retailer, or other
4 person or entity in this state that obtains from a source outside of
5 this state any substance specified in subdivision (a) of Section
6 11100 shall submit a report of that transaction to the Department
7 of Justice 21 days in advance of obtaining the substance. However,
8 the Department of Justice may authorize the submission of reports
9 within 72 hours, or within a timeframe and in a manner acceptable
10 to the Department of Justice, after the actual physical obtaining of
11 a specified substance with respect to repeated transactions between
12 a furnisher and an obtainer involving the substances, if the
13 Department of Justice determines that the obtainer has established
14 a record of utilization of the substances for lawful purposes. This
15 section does not apply to any person whose prescribing or
16 dispensing activities are subject to the reporting requirements set
17 forth in Section 11164; any manufacturer or wholesaler who is
18 licensed by the California State Board of Pharmacy and also
19 registered with the federal Drug Enforcement Administration of
20 the United States Department of Justice; any analytical research
21 facility that is registered with the federal Drug Enforcement
22 Administration of the United States Department of Justice; or any
23 state-licensed health care facility.

24 (b) (1) Any person specified in subdivision (a) who does not
25 submit a report as required by that subdivision shall be punished
26 by imprisonment in a county jail not exceeding six months, by a
27 fine not exceeding five thousand dollars (\$5,000), or by both that
28 fine and imprisonment.

29 (2) Any person specified in subdivision (a) who has been
30 previously convicted of a violation of subdivision (a) who
31 subsequently does not submit a report as required by subdivision
32 (a) shall be punished by imprisonment ~~in the state prison pursuant~~
33 *to subdivision (h) of Section 1170 of the Penal Code*, or by
34 imprisonment in a county jail not exceeding one year, by a fine
35 not exceeding one hundred thousand dollars (\$100,000), or by
36 both that fine and imprisonment.

37 *SEC. 147. Section 11105 of the Health and Safety Code is*
38 *amended to read:*

1 11105. (a) It is unlawful for any person to knowingly make
2 a false statement in connection with any report or record required
3 under this article.

4 (b) (1) Any person who violates this section shall be punished
5 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
6 *Section 1170 of the Penal Code*, or by imprisonment in ~~the~~ a county
7 jail not exceeding one year, or by a fine not exceeding five
8 thousand dollars (\$5,000), or by both ~~such~~ *that* fine and
9 imprisonment.

10 (2) Any person who has been previously convicted of violating
11 this section and who subsequently violates this section shall be
12 punished by imprisonment ~~in the state prison pursuant to~~
13 *subdivision (h) of Section 1170 of the Penal Code* for two, three,
14 or four years, or by a fine not exceeding one hundred thousand
15 dollars (\$100,000), or by both ~~such~~ *that* fine and imprisonment.

16 *SEC. 148. Section 11153 of the Health and Safety Code is*
17 *amended to read:*

18 11153. (a) A prescription for a controlled substance shall only
19 be issued for a legitimate medical purpose by an individual
20 practitioner acting in the usual course of his or her professional
21 practice. The responsibility for the proper prescribing and
22 dispensing of controlled substances is upon the prescribing
23 practitioner, but a corresponding responsibility rests with the
24 pharmacist who fills the prescription. Except as authorized by this
25 division, the following are not legal prescriptions: (1) an order
26 purporting to be a prescription which is issued not in the usual
27 course of professional treatment or in legitimate and authorized
28 research; or (2) an order for an addict or habitual user of controlled
29 substances, which is issued not in the course of professional
30 treatment or as part of an authorized narcotic treatment program,
31 for the purpose of providing the user with controlled substances,
32 sufficient to keep him or her comfortable by maintaining customary
33 use.

34 (b) Any person who knowingly violates this section shall be
35 punished by imprisonment ~~in the state prison pursuant to~~
36 *subdivision (h) of Section 1170 of the Penal Code*, or in ~~the~~ a
37 county jail not exceeding one year, or by a fine not exceeding
38 twenty thousand dollars (\$20,000), or by both ~~a~~ *that* fine and
39 imprisonment.

1 (c) No provision of the amendments to this section enacted
2 during the second year of the 1981–82 Regular Session shall be
3 construed as expanding the scope of practice of a pharmacist.

4 *SEC. 149. Section 11153.5 of the Health and Safety Code is*
5 *amended to read:*

6 11153.5. (a) No wholesaler or manufacturer, or agent or
7 employee of a wholesaler or manufacturer, shall furnish controlled
8 substances for other than legitimate medical purposes.

9 (b) Anyone who violates this section knowing, or having a
10 conscious disregard for the fact, that the controlled substances are
11 for other than a legitimate medical purpose shall be punishable by
12 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
13 *Section 1170 of the Penal Code*, or in ~~the~~ a county jail not
14 exceeding one year, or by a fine not exceeding twenty thousand
15 dollars (\$20,000), or by both ~~a~~ that fine and imprisonment.

16 (c) Factors to be considered in determining whether a
17 wholesaler or manufacturer, or agent or employee of a wholesaler
18 or manufacturer, furnished controlled substances knowing or
19 having a conscious disregard for the fact that the controlled
20 substances are for other than legitimate medical purposes shall
21 include, but not be limited to, whether the use of controlled
22 substances was for purposes of increasing athletic ability or
23 performance, the amount of controlled substances furnished, the
24 previous ordering pattern of the customer (including size and
25 frequency of orders), the type and size of the customer, and where
26 and to whom the customer distributes the product.

27 *SEC. 150. Section 11162.5 of the Health and Safety Code is*
28 *amended to read:*

29 11162.5. (a) Every person who counterfeits a prescription
30 blank purporting to be an official prescription blank prepared and
31 issued pursuant to Section 11161.5, or knowingly possesses more
32 than three counterfeited prescription blanks, shall be punished by
33 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
34 *Section 1170 of the Penal Code* or by imprisonment in a county
35 jail for not more than one year.

36 (b) Every person who knowingly possesses three or fewer
37 counterfeited prescription blanks purporting to be official
38 prescription blanks prepared and issued pursuant to Section
39 11161.5, shall be guilty of a misdemeanor punishable by
40 imprisonment in a county jail not exceeding six months, or by a

1 fine not exceeding one thousand dollars (\$1,000), or by both *that*
2 *fine and imprisonment.*

3 *SEC. 151. Section 11350 of the Health and Safety Code is*
4 *amended to read:*

5 11350. (a) Except as otherwise provided in this division, every
6 person who possesses (1) any controlled substance specified in
7 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section
8 11054, specified in paragraph (14), (15), or (20) of subdivision (d)
9 of Section 11054, or specified in subdivision (b) or (c) of Section
10 11055, or specified in subdivision (h) of Section 11056, or (2) any
11 controlled substance classified in Schedule III, IV, or V which is
12 a narcotic drug, unless upon the written prescription of a physician,
13 dentist, podiatrist, or veterinarian licensed to practice in this state,
14 shall be punished by imprisonment ~~in the state prison~~ *pursuant to*
15 *subdivision (h) of Section 1170 of the Penal Code.*

16 (b) Except as otherwise provided in this division, every person
17 who possesses any controlled substance specified in subdivision
18 (e) of Section 11054 shall be punished by imprisonment ~~in the a~~
19 ~~county jail for not more than one year or in the state prison~~
20 *pursuant to subdivision (h) of Section 1170 of the Penal Code.*

21 (c) Except as otherwise provided in this division, whenever a
22 person who possesses any of the controlled substances specified
23 in subdivision (a) or (b), the judge may, in addition to any
24 punishment provided for pursuant to subdivision (a) or (b), assess
25 against that person a fine not to exceed seventy dollars (\$70) with
26 proceeds of this fine to be used in accordance with Section 1463.23
27 of the Penal Code. The court shall, however, take into consideration
28 the defendant's ability to pay, and no defendant shall be denied
29 probation because of his or her inability to pay the fine permitted
30 under this subdivision.

31 (d) Except in unusual cases in which it would not serve the
32 interest of justice to do so, whenever a court grants probation
33 pursuant to a felony conviction under this section, in addition to
34 any other conditions of probation which may be imposed, the
35 following conditions of probation shall be ordered:

36 (1) For a first offense under this section, a fine of at least one
37 thousand dollars (\$1,000) or community service.

38 (2) For a second or subsequent offense under this section, a
39 fine of at least two thousand dollars (\$2,000) or community service.

(3) If a defendant does not have the ability to pay the minimum fines specified in paragraphs (1) and (2), community service shall be ordered in lieu of the fine.

SEC. 152. Section 11351 of the Health and Safety Code is amended to read:

11351. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

SEC. 153. Section 11351.5 of the Health and Safety Code is amended to read:

11351.5. Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale cocaine base which is specified in paragraph (1) of subdivision (f) of Section 11054, shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

SEC. 154. Section 11352 of the Health and Safety Code is amended to read:

11352. (a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for three, six, or nine years.

SEC. 155. Section 11353.5 of the Health and Safety Code is amended to read:

11353.5. Except as authorized by law, any person 18 years of age or older who unlawfully prepares for sale upon school grounds or a public playground, a child day care facility, a church, or a synagogue, or sells or gives away a controlled substance, other than a controlled substance described in Section 11353 or 11380, to a minor upon the grounds of, or within, any school, child day care facility, public playground, church, or synagogue providing instruction in preschool, kindergarten, or any of grades 1 to 12, inclusive, or providing child care services, during hours in which those facilities are open for classes, school-related programs, or child care, or at any time when minors are using the facility where the offense occurs, or upon the grounds of a public playground during the hours in which school-related programs for minors are being conducted, or at any time when minors are using the facility where the offense occurs, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for five, seven, or nine years. Application of this section shall be limited to persons at least five years older than the minor to whom he or she prepares for sale, sells, or gives away a controlled substance.

SEC. 156. Section 11353.6 of the Health and Safety Code is amended to read:

11353.6. (a) This section shall be known, and may be cited, as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

(b) Any person 18 years of age or over who is convicted of a violation of Section 11351.5, 11352, or 11379.6, as those sections apply to paragraph (1) of subdivision (f) of Section 11054, or of Section 11351, 11352, or 11379.6, as those sections apply to paragraph (11) of subdivision (c) of Section 11054, or of Section 11378, 11379, or 11379.6, as those sections apply to paragraph (2) of subdivision (d) of Section 11055, or of a conspiracy to commit one of those offenses, where the violation takes place upon

1 the grounds of, or within 1,000 feet of, a public or private
2 elementary, vocational, junior high, or high school during hours
3 that the school is open for classes or school-related programs, or
4 at any time when minors are using the facility where the offense
5 occurs, shall receive an additional punishment of 3, 4, or 5 years
6 at the court's discretion.

7 (c) Any person 18 years of age or older who is convicted of a
8 violation pursuant to subdivision (b) which involves a minor who
9 is at least four years younger than that person, as a full and
10 separately served enhancement to that provided in subdivision (b),
11 shall be punished by imprisonment ~~in the state prison pursuant to~~
12 *subdivision (h) of Section 1170 of the Penal Code* for 3, 4, or 5
13 years at the court's discretion.

14 (d) The additional terms provided in this section shall not be
15 imposed unless the allegation is charged in the accusatory pleading
16 and admitted or found to be true by the trier of fact.

17 (e) The additional terms provided in this section shall be in
18 addition to any other punishment provided by law and shall not
19 be limited by any other provision of law.

20 (f) Notwithstanding any other provision of law, the court may
21 strike the additional punishment for the enhancements provided
22 in this section if it determines that there are circumstances in
23 mitigation of the additional punishment and states on the record
24 its reasons for striking the additional punishment.

25 (g) "Within 1,000 feet of a public or private elementary,
26 vocational, junior high, or high school" means any public area or
27 business establishment where minors are legally permitted to
28 conduct business which is located within 1,000 feet of any public
29 or private elementary, vocational, junior high, or high school.

30 *SEC. 157. Section 11353.7 of the Health and Safety Code is*
31 *amended to read:*

32 11353.7. Except as authorized by law, and except as provided
33 otherwise in Sections 11353.1, 11353.6, and 11380.1 with respect
34 to playgrounds situated in a public park, any person 18 years of
35 age or older who unlawfully prepares for sale in a public park,
36 including units of the state park system and state vehicular
37 recreation areas, or sells or gives away a controlled substance to
38 a minor under the age of 14 years in a public park, including units
39 of the state park system and state vehicular recreation areas, during
40 hours in which the public park, including units of the state park

1 system and state vehicular recreation areas, is open for use, with
2 knowledge that the person is a minor under the age of 14 years,
3 shall be punished by imprisonment ~~in the state prison~~ pursuant to
4 subdivision (h) of Section 1170 of the Penal Code for three, six,
5 or nine years.

6 SEC. 158. Section 11356 of the Health and Safety Code is
7 amended to read:

8 11356. As used in this article “felony offense,” and “offense
9 punishable as a felony” refer to an offense prior to July 1, 2011,
10 for which the law prescribes imprisonment in the state prison, or
11 for an offense on or after July 1, 2011, imprisonment in either the
12 state prison or pursuant to subdivision (h) of Section 1170 of the
13 Penal Code, as either an alternative or the sole penalty, regardless
14 of the sentence the particular defendant received.

15 SEC. 159. Section 11357 of the Health and Safety Code is
16 amended to read:

17 11357. (a) Except as authorized by law, every person who
18 possesses any concentrated cannabis shall be punished by
19 imprisonment in the county jail for a period of not more than one
20 year or by a fine of not more than five hundred dollars (\$500), or
21 by both such fine and imprisonment, or shall be punished by
22 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
23 Section 1170 of the Penal Code.

24 (b) Except as authorized by law, every person who possesses
25 not more than 28.5 grams of marijuana, other than concentrated
26 cannabis, is guilty of an infraction punishable by a fine of not more
27 than one hundred dollars (\$100).

28 (c) Except as authorized by law, every person who possesses
29 more than 28.5 grams of marijuana, other than concentrated
30 cannabis, shall be punished by imprisonment ~~in the~~ a county jail
31 for a period of not more than six months or by a fine of not more
32 than five hundred dollars (\$500), or by both such fine and
33 imprisonment.

34 (d) Except as authorized by law, every person 18 years of age
35 or over who possesses not more than 28.5 grams of marijuana,
36 other than concentrated cannabis, upon the grounds of, or within,
37 any school providing instruction in kindergarten or any of grades
38 1 through 12 during hours the school is open for classes or
39 school-related programs is guilty of a misdemeanor and shall be
40 punished by a fine of not more than five hundred dollars (\$500),

1 or by imprisonment in ~~the~~ a county jail for a period of not more
2 than 10 days, or both.

3 (e) Except as authorized by law, every person under the age of
4 18 who possesses not more than 28.5 grams of marijuana, other
5 than concentrated cannabis, upon the grounds of, or within, any
6 school providing instruction in kindergarten or any of grades 1
7 through 12 during hours the school is open for classes or
8 school-related programs is guilty of a misdemeanor and shall be
9 subject to the following dispositions:

10 (1) A fine of not more than two hundred fifty dollars (\$250),
11 upon a finding that a first offense has been committed.

12 (2) A fine of not more than five hundred dollars (\$500), or
13 commitment to a juvenile hall, ranch, camp, forestry camp, or
14 secure juvenile home for a period of not more than 10 days, or
15 both, upon a finding that a second or subsequent offense has been
16 committed.

17 *SEC. 160. Section 11358 of the Health and Safety Code is*
18 *amended to read:*

19 11358. Every person who plants, cultivates, harvests, dries, or
20 processes any marijuana or any part thereof, except as otherwise
21 provided by law, shall be punished by imprisonment ~~in the state~~
22 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
23 ~~Code.~~

24 *SEC. 161. Section 11359 of the Health and Safety Code is*
25 *amended to read:*

26 11359. Every person who possesses for sale any marijuana,
27 except as otherwise provided by law, shall be punished by
28 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
29 ~~Section 1170 of the Penal Code.~~

30 *SEC. 162. Section 11360 of the Health and Safety Code is*
31 *amended to read:*

32 11360. (a) Except as otherwise provided by this section or as
33 authorized by law, every person who transports, imports into this
34 state, sells, furnishes, administers, or gives away, or offers to
35 transport, import into this state, sell, furnish, administer, or give
36 away, or attempts to import into this state or transport any
37 marijuana shall be punished by imprisonment ~~in the state prison~~
38 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for
39 a period of two, three or four years.

(b) Except as authorized by law, every person who gives away, offers to give away, transports, offers to transport, or attempts to transport not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, such person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

SEC. 163. Section 11362 of the Health and Safety Code is amended to read:

11362. As used in this article “felony offense,” and offense “punishable as a felony” refer to an offense *prior to July 1, 2011*, for which the law prescribes imprisonment in the state prison, *or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code*, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

SEC. 164. Section 11366.5 of the Health and Safety Code is amended to read:

11366.5. (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, ~~or in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine,

1 methamphetamine, or lysergic acid diethylamide and who obtains
2 excessive profits from the use of the building, room, space, or
3 enclosure shall be punished by imprisonment ~~in the state prison~~
4 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
5 two, three, or four years.

6 (c) Any person who violates subdivision (a) after previously
7 being convicted of a violation of subdivision (a) shall be punished
8 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
9 *Section 1170 of the Penal Code* for two, three, or four years.

10 (d) For the purposes of this section, “excessive profits” means
11 the receipt of consideration of a value substantially higher than
12 fair market value.

13 *SEC. 165. Section 11366.6 of the Health and Safety Code is*
14 *amended to read:*

15 11366.6. Any person who utilizes a building, room, space, or
16 enclosure specifically designed to suppress law enforcement entry
17 in order to sell, manufacture, or possess for sale any amount of
18 cocaine base as specified in paragraph (1) of subdivision (f) of
19 Section 11054, cocaine as specified in paragraph (6) of subdivision
20 (b) of Section 11055, heroin, phencyclidine, amphetamine,
21 methamphetamine, or lysergic acid diethylamide shall be punished
22 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
23 *Section 1170 of the Penal Code* for three, four, or five years.

24 *SEC. 166. Section 11366.8 of the Health and Safety Code is*
25 *amended to read:*

26 11366.8. (a) Every person who possesses, uses, or controls a
27 false compartment with the intent to store, conceal, smuggle, or
28 transport a controlled substance within the false compartment shall
29 be punished by imprisonment in a county jail for a term of
30 imprisonment not to exceed one year or ~~in the state prison~~ *pursuant*
31 *to subdivision (h) of Section 1170 of the Penal Code.*

32 (b) Every person who designs, constructs, builds, alters, or
33 fabricates a false compartment for, or installs or attaches a false
34 compartment to, a vehicle with the intent to store, conceal,
35 smuggle, or transport a controlled substance shall be punished by
36 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
37 *Section 1170 of the Penal Code* for 16 months or two or three
38 years.

39 (c) The term “vehicle” means any of the following vehicles
40 without regard to whether the vehicles are private or commercial,

1 including, but not limited to, cars, trucks, buses, aircraft, boats,
2 ships, yachts, and vessels.

3 (d) The term “false compartment” means any box, container,
4 space, or enclosure that is intended for use or designed for use to
5 conceal, hide, or otherwise prevent discovery of any controlled
6 substance within or attached to a vehicle, including, but not limited
7 to, any of the following:

8 (1) False, altered, or modified fuel tanks.

9 (2) Original factory equipment of a vehicle that is modified,
10 altered, or changed.

11 (3) Compartment, space, or box that is added to, or fabricated,
12 made, or created from, existing compartments, spaces, or boxes
13 within a vehicle.

14 *SEC. 167. Section 11370.6 of the Health and Safety Code is*
15 *amended to read:*

16 11370.6. (a) Every person who possesses any moneys or
17 negotiable instruments in excess of one hundred thousand dollars
18 (\$100,000) which have been obtained as the result of the unlawful
19 sale, possession for sale, transportation, manufacture, offer for
20 sale, or offer to manufacture any controlled substance listed in
21 Section 11054, 11055, 11056, 11057, or 11058, with knowledge
22 that the moneys or negotiable instruments have been so obtained,
23 and any person who possesses any moneys or negotiable
24 instruments in excess of one hundred thousand dollars (\$100,000)
25 which are intended by that person for the unlawful purchase of
26 any controlled substance listed in Section 11054, 11055, 11056,
27 11057, or 11058 and who commits an act in substantial furtherance
28 of the unlawful purchase, shall be punished by imprisonment in
29 ~~the a~~ county jail for a term not to exceed one year, or by
30 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
31 Section 1170 of the Penal Code for two, three, or four years.

32 (b) In consideration of the constitutional right to counsel
33 afforded by the Sixth Amendment to the United States Constitution
34 and Section 15 of Article 1 of the California Constitution, when a
35 case charged under subdivision (a) involves an attorney who
36 accepts a fee for representing a client in a criminal investigation
37 or proceeding, the prosecution shall additionally be required to
38 prove that the moneys or negotiable instruments were accepted by
39 the attorney with the intent to participate in the unlawful conduct

described in subdivision (a) or to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

(c) In determining the guilt or innocence of a person charged under subdivision (a), the trier of fact may consider the following in addition to any other relevant evidence:

(1) The lack of gainful employment by the person charged.

(2) The expert opinion of a qualified controlled substances expert as to the source of the assets.

(3) The existence of documents or ledgers that indicate sales of controlled substances.

SEC. 168. Section 11371 of the Health and Safety Code is amended to read:

11371. Any person who shall knowingly violate any of the provisions of Section 11153, 11154, 11155, or 11156 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or in a county jail not exceeding one year, or by a fine not exceeding twenty thousand dollars (\$20,000), or by both such fine and imprisonment.

SEC. 169. Section 11371.1 of the Health and Safety Code is amended to read:

11371.1. Any person who shall knowingly violate any of the provisions of Section 11173 or 11174 with respect to (1) a controlled substance specified in subdivision (b), (c), or (d) of Section 11055, or (2) a controlled substance specified in paragraph (1) of subdivision (b) of Section 11056, or (3) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V, or who in any voluntary manner solicits, induces, encourages or intimidates any minor with the intent that such minor shall commit any such offense, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or in a county jail not exceeding one year.

SEC. 170. Section 11374.5 of the Health and Safety Code is amended to read:

1 11374.5. (a) Any manufacturer of a controlled substance who
2 disposes of any hazardous substance that is a controlled substance
3 or a chemical used in, or is a byproduct of, the manufacture of a
4 controlled substance in violation of any law regulating the disposal
5 of hazardous substances or hazardous waste is guilty of a public
6 offense punishable by imprisonment ~~in the state prison pursuant~~
7 *to subdivision (h) of Section 1170 of the Penal Code* for two, three,
8 or four years or in the county jail not exceeding one year.

9 (b) (1) In addition to any other penalty or liability imposed
10 by law, a person who is convicted of violating subdivision (a), or
11 any person who is convicted of the manufacture, sale, possession
12 for sale, possession, transportation, or disposal of any hazardous
13 substance that is a controlled substance or a chemical used in, or
14 is a byproduct of, the manufacture of a controlled substance in
15 violation of any law, shall pay a penalty equal to the amount of
16 the actual cost incurred by the state or local agency to remove and
17 dispose of the hazardous substance that is a controlled substance
18 or a chemical used in, or is a byproduct of, the manufacture of a
19 controlled substance and to take removal action with respect to
20 any release of the hazardous substance or any items or materials
21 contaminated by that release, if the state or local agency requests
22 the prosecuting authority to seek recovery of that cost. The court
23 shall transmit all penalties collected pursuant to this subdivision
24 to the county treasurer of the county in which the court is located
25 for deposit in a special account in the county treasury. The county
26 treasurer shall pay that money at least once a month to the agency
27 that requested recovery of the cost for the removal action. The
28 county may retain up to 5 percent of any assessed penalty for
29 appropriate and reasonable administrative costs attributable to the
30 collection and disbursement of the penalty.

31 (2) If the Department of Toxic Substances Control has requested
32 recovery of the cost of removing the hazardous substance that is
33 a controlled substance or a chemical used in, or is a byproduct of,
34 the manufacture of a controlled substance or taking removal action
35 with respect to any release of the hazardous substance, the county
36 treasurer shall transfer funds in the amount of the penalty collected
37 to the Treasurer, who shall deposit the money in the Illegal Drug
38 Lab Cleanup Account, which is hereby created in the General Fund
39 in the State Treasury. The Department of Toxic Substances Control
40 may expend the money in the Illegal Drug Lab Cleanup Account,

1 upon appropriation by the Legislature, to cover the cost of taking
2 removal actions pursuant to Section 25354.5.

3 (3) If a local agency and the Department of Toxic Substances
4 Control have both requested recovery of removal costs with respect
5 to a hazardous substance that is a controlled substance or a
6 chemical used in, or is a byproduct of, the manufacture of a
7 controlled substance, the county treasurer shall apportion any
8 penalty collected among the agencies involved in proportion to
9 the costs incurred.

10 (c) As used in this section the following terms have the
11 following meaning:

12 (1) “Dispose” means to abandon, deposit, intern, or otherwise
13 discard as a final action after use has been achieved or a use is no
14 longer intended.

15 (2) “Hazardous substance” has the same meaning as defined
16 in Section 25316.

17 (3) “Hazardous waste” has the same meaning as defined in
18 Section 25117.

19 (4) For purposes of this section, “remove” or “removal” has
20 the same meaning as set forth in Section 25323.

21 *SEC. 171. Section 11377 of the Health and Safety Code is*
22 *amended to read:*

23 11377. (a) Except as authorized by law and as otherwise
24 provided in subdivision (b) or Section 11375, or in Article 7
25 (commencing with Section 4211) of Chapter 9 of Division 2 of
26 the Business and Professions Code, every person who possesses
27 any controlled substance which is (1) classified in Schedule III,
28 IV, or V, and which is not a narcotic drug, (2) specified in
29 subdivision (d) of Section 11054, except paragraphs (13), (14),
30 (15), and (20) of subdivision (d), (3) specified in paragraph (11)
31 of subdivision (c) of Section 11056, (4) specified in paragraph (2)
32 or (3) of subdivision (f) of Section 11054, or (5) specified in
33 subdivision (d), (e), or (f) of Section 11055, unless upon the
34 prescription of a physician, dentist, podiatrist, or veterinarian,
35 licensed to practice in this state, shall be punished by imprisonment
36 in a county jail for a period of not more than one year or ~~in the~~
37 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
38 *Penal Code.*

39 (b) (1) Any person who violates subdivision (a) by unlawfully
40 possessing a controlled substance specified in subdivision (f) of

1 Section 11056, and who has not previously been convicted of a
2 violation involving a controlled substance specified in subdivision
3 (f) of Section 11056, is guilty of a misdemeanor.

4 (2) Any person who violates subdivision (a) by unlawfully
5 possessing a controlled substance specified in subdivision (g) of
6 Section 11056 is guilty of a misdemeanor.

7 (3) Any person who violates subdivision (a) by unlawfully
8 possessing a controlled substance specified in paragraph (7) or (8)
9 of subdivision (d) of Section 11055 is guilty of a misdemeanor.

10 (4) Any person who violates subdivision (a) by unlawfully
11 possessing a controlled substance specified in paragraph (8) of
12 subdivision (f) of Section 11057 is guilty of a misdemeanor.

13 (c) In addition to any fine assessed under subdivision (b), the
14 judge may assess a fine not to exceed seventy dollars (\$70) against
15 any person who violates subdivision (a), with the proceeds of this
16 fine to be used in accordance with Section 1463.23 of the Penal
17 Code. The court shall, however, take into consideration the
18 defendant's ability to pay, and no defendant shall be denied
19 probation because of his or her inability to pay the fine permitted
20 under this subdivision.

21 *SEC. 172. Section 11378 of the Health and Safety Code is*
22 *amended to read:*

23 11378. Except as otherwise provided in Article 7 (commencing
24 with Section 4211) of Chapter 9 of Division 2 of the Business and
25 Professions Code, every person who possesses for sale any
26 controlled substance which is (1) classified in Schedule III, IV, or
27 V and which is not a narcotic drug, except subdivision (g) of
28 Section 11056, (2) specified in subdivision (d) of Section 11054,
29 except paragraphs (13), (14), (15), (20), (21), (22), and (23) of
30 subdivision (d), (3) specified in paragraph (11) of subdivision (c)
31 of Section 11056, (4) specified in paragraph (2) or (3) of
32 subdivision (f) of Section 11054, or (5) specified in subdivision
33 (d), (e), or (f), except paragraph (3) of subdivision (e) and
34 subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of
35 Section 11055, shall be punished by imprisonment ~~in the state~~
36 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
37 Code.

38 *SEC. 173. Section 11378.5 of the Health and Safety Code is*
39 *amended to read:*

11378.5. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale phencyclidine or any analog or any precursor of phencyclidine which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) or in subdivision (f), except subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for a period of three, four, or five years.

SEC. 174. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for three, six, or nine years.

1 *SEC. 175. Section 11379.5 of the Health and Safety Code is*
2 *amended to read:*

3 11379.5. (a) Except as otherwise provided in subdivision (b)
4 and in Article 7 (commencing with Section 4211) of Chapter 9 of
5 Division 2 of the Business and Professions Code, every person
6 who transports, imports into this state, sells, furnishes, administers,
7 or gives away, or offers to transport, import into this state, sell,
8 furnish, administer, or give away, or attempts to import into this
9 state or transport phencyclidine or any of its analogs which is
10 specified in paragraph (21), (22), or (23) of subdivision (d) of
11 Section 11054 or in paragraph (3) of subdivision (e) of Section
12 11055, or its precursors as specified in subparagraph (A) or (B)
13 of paragraph (2) of subdivision (f) of Section 11055, unless upon
14 the prescription of a physician, dentist, podiatrist, or veterinarian
15 licensed to practice in this state, shall be punished by imprisonment
16 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
17 *the Penal Code* for a period of three, four, or five years.

18 (b) Notwithstanding the penalty provisions of subdivision (a),
19 any person who transports for sale any controlled substances
20 specified in subdivision (a) within this state from one county to
21 another noncontiguous county shall be punished by imprisonment
22 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
23 *the Penal Code* for three, six, or nine years.

24 *SEC. 176. Section 11379.6 of the Health and Safety Code is*
25 *amended to read:*

26 11379.6. (a) Except as otherwise provided by law, every
27 person who manufactures, compounds, converts, produces, derives,
28 processes, or prepares, either directly or indirectly by chemical
29 extraction or independently by means of chemical synthesis, any
30 controlled substance specified in Section 11054, 11055, 11056,
31 11057, or 11058 shall be punished by imprisonment ~~in the state~~
32 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
33 *Code* for three, five, or seven years and by a fine not exceeding
34 fifty thousand dollars (\$50,000).

35 (b) Except when an enhancement pursuant to Section 11379.7
36 is pled and proved, the fact that a person under 16 years of age
37 resided in a structure in which a violation of this section involving
38 methamphetamine occurred shall be considered a factor in
39 aggravation by the sentencing court.

1 (c) Except as otherwise provided by law, every person who
2 offers to perform an act which is punishable under subdivision (a)
3 shall be punished by imprisonment ~~in the state prison~~ pursuant to
4 *subdivision (h) of Section 1170 of the Penal Code* for three, four,
5 or five years.

6 (d) All fines collected pursuant to subdivision (a) shall be
7 transferred to the State Treasury for deposit in the Clandestine
8 Drug Lab Clean-up Account, as established by Section 5 of Chapter
9 1295 of the Statutes of 1987. The transmission to the State Treasury
10 shall be carried out in the same manner as fines collected for the
11 state by the county.

12 *SEC. 177. Section 11380.7 of the Health and Safety Code is*
13 *amended to read:*

14 11380.7. (a) Notwithstanding any other provision of law, any
15 person who is convicted of trafficking in heroin, cocaine, cocaine
16 base, methamphetamine, or phencyclidine (PCP), or of a conspiracy
17 to commit trafficking in heroin, cocaine, cocaine base,
18 methamphetamine, or phencyclidine (PCP), in addition to the
19 punishment imposed for the conviction, shall be imprisoned ~~in the~~
20 ~~state prison~~ pursuant to *subdivision (h) of Section 1170 of the*
21 *Penal Code* for an additional one year if the violation occurred
22 upon the grounds of, or within 1,000 feet of, a drug treatment
23 center, detoxification facility, or homeless shelter.

24 (b) (1) The additional punishment provided in this section shall
25 not be imposed unless the allegation is charged in the accusatory
26 pleading and admitted by the defendant or found to be true by the
27 trier of fact.

28 (2) The additional punishment provided in this section shall not
29 be imposed if any other additional punishment is imposed pursuant
30 to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

31 (c) Notwithstanding any other provision of law, the court may
32 strike the additional punishment provided for in this section if it
33 determines that there are circumstances in mitigation of the
34 additional punishment and states on the record its reasons for
35 striking the additional punishment. In determining whether or not
36 to strike the additional punishment, the court shall consider the
37 following factors and any relevant factors in aggravation or
38 mitigation in Rules 4.421 and 4.423 of the California Rules of
39 Court.

1 (1) The following factors indicate that the court should exercise
2 its discretion to strike the additional punishment unless these
3 factors are outweighed by factors in aggravation:

4 (A) The defendant is homeless, or is in a homeless shelter or
5 transitional housing.

6 (B) The defendant lacks resources for the necessities of life.

7 (C) The defendant is addicted to or dependent on controlled
8 substances.

9 (D) The defendant's motive was merely to maintain a steady
10 supply of drugs for personal use.

11 (E) The defendant was recruited or exploited by a more culpable
12 person to commit the crime.

13 (2) The following factors indicate that the court should not
14 exercise discretion to strike the additional punishment unless these
15 factors are outweighed by factors in mitigation:

16 (A) The defendant, in committing the crime, preyed on homeless
17 persons, drug addicts or substance abusers who were seeking
18 treatment, shelter or transitional services.

19 (B) The defendant's primary motive was monetary
20 compensation.

21 (C) The defendant induced others, particularly homeless persons,
22 drug addicts and substance abusers, to become involved in
23 trafficking.

24 (d) For the purposes of this section, the following terms have
25 the following meanings:

26 (1) "Detoxification facility" means any premises, place, or
27 building in which 24-hour residential nonmedical services are
28 provided to adults who are recovering from problems related to
29 alcohol, drug, or alcohol and drug misuse or abuse, and who need
30 alcohol, drug, or alcohol and drug recovery treatment or
31 detoxification services.

32 (2) "Drug treatment program" or "drug treatment" has the same
33 meaning set forth in subdivision (b) of Section 1210 of the Penal
34 Code.

35 (3) "Homeless shelter" includes, but is not limited to, emergency
36 shelter housing, as well as transitional housing, but does not include
37 domestic violence shelters. "Emergency shelter housing" is housing
38 with minimal support services for homeless persons in which
39 residency is limited to six months or less and is not related to the
40 person's ability to pay. "Transitional housing" means housing with

supportive services, including self-sufficiency development services, which is exclusively designed and targeted to help recently homeless persons find permanent housing as soon as reasonably possible, limits residency to 24 months, and in which rent and service fees are based on ability to pay.

(4) “Trafficking” means any of the unlawful activities specified in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379, 11379.6, and 11380. It does not include simple possession or drug use.

SEC. 178. Section 11381 of the Health and Safety Code is amended to read:

11381. As used in this article “felony offense” and offense “punishable as a felony” refer to an offense *prior to July 1, 2011*, for which the law prescribes imprisonment in the state prison, *or for an offense on or after July 1, 2011, imprisonment in either the state prison or pursuant to subdivision (h) of Section 1170 of the Penal Code*, as either an alternative or the sole penalty, regardless of the sentence the particular defendant received.

SEC. 179. Section 11383 of the Health and Safety Code is amended to read:

11383. (a) Any person who possesses at the same time any of the following combinations, a combination product thereof, or possesses any compound or mixture containing the chemicals listed in the following combinations, with the intent to manufacture phencyclidine (PCP) or any of its analogs specified in subdivision (d) of Section 11054 or subdivision (e) of Section 11055, is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for two, four, or six years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1 - p h e n y l c y c l o h e x y l a m i n e (P C A), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide (PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to manufacture phencyclidine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

SEC. 180. Section 11383.5 of the Health and Safety Code is amended to read:

11383.5. (a) Any person who possesses both methylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture methamphetamine, or who possesses both ethylamine and phenyl-2-propanone (phenylacetone) at the same time with the intent to manufacture N-ethylamphetamine, is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years.

(b) (1) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses a substance containing ephedrine or pseudoephedrine, or any salts, isomers, or salts of isomers of ephedrine or pseudoephedrine, or who possesses at the same time any of the following, or a combination product thereof, is guilty of a felony and shall be punished by imprisonment ~~in the~~

~~state-prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years:

(A) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who, with the intent to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055, possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent is guilty of a felony and shall be punished by imprisonment ~~in the state-prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section, with the intent to manufacture any of the following controlled substances, is guilty of a felony and shall be punished by imprisonment ~~in the state-prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, four, or six years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine,

1 phenylpropanolamine, hydriodic acid or a reducing agent, thionyl
2 chloride, or phosphorus pentachloride, with the intent to
3 manufacture methamphetamine, is guilty of a felony and shall be
4 punished by imprisonment ~~in the state prison pursuant to~~
5 *subdivision (h) of Section 1170 of the Penal Code* for two, four,
6 or six years.

7 (e) Any person who possesses essential chemicals sufficient to
8 manufacture hydriodic acid or a reducing agent, with the intent to
9 manufacture methamphetamine, is guilty of a felony and shall be
10 punished by imprisonment ~~in the state prison pursuant to~~
11 *subdivision (h) of Section 1170 of the Penal Code* for two, four,
12 or six years.

13 (f) Any person who possesses any compound or mixture
14 containing ephedrine, pseudoephedrine, norpseudoephedrine,
15 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,
16 hydriodic acid or a reducing agent, thionyl chloride, or phosphorus
17 pentachloride, with the intent to manufacture methamphetamine,
18 is guilty of a felony and shall be punished by imprisonment ~~in the~~
19 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
20 *Penal Code* for two, four, or six years.

21 (g) For purposes of this section, a “reducing agent” for the
22 purposes of manufacturing methamphetamine means an agent that
23 causes reduction to occur by either donating a hydrogen atom to
24 an organic compound or by removing an oxygen atom from an
25 organic compound.

26 (h) This section does not apply to drug manufacturers licensed
27 by this state or persons authorized by regulation of the Board of
28 Pharmacy to possess those substances or combinations of
29 substances.

30 *SEC. 181. Section 11383.6 of the Health and Safety Code is*
31 *amended to read:*

32 11383.6. (a) Any person who possesses at the same time any
33 of the following combinations, a combination product thereof, or
34 possesses any compound or mixture containing the chemicals listed
35 in the following combinations, with the intent to sell, transfer, or
36 otherwise furnish those chemicals, combinations, or mixtures to
37 another person with the knowledge that they will be used to
38 manufacture phencyclidine (PCP) or any of its analogs specified
39 in subdivision (d) of Section 11054 or subdivision (e) of Section
40 11055 is guilty of a felony and shall be punished by imprisonment

~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months, two, or three years:

(1) Piperidine and cyclohexanone.

(2) Pyrrolidine and cyclohexanone.

(3) Morpholine and cyclohexanone.

(b) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish the isomer to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months, two, or three years:

(1) Phencyclidine (PCP).

(2) Any analog of PCP specified in subdivision (d) of Section 11054, or in subdivision (e) of Section 11055.

(c) Any person who possesses any compound or mixture containing piperidine, cyclohexanone, pyrrolidine, morpholine, 1 - p h e n y l c y c l o h e x y l a m i n e (P C A), 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium bromide (PMB) with the intent to sell, transfer, or otherwise furnish the compound or mixture to another person with the knowledge that it will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months, two, or three years.

(d) Any person who possesses immediate precursors sufficient for the manufacture of piperidine, cyclohexanone, pyrrolidine, morpholine, or phenylmagnesium bromide (PMB) with the intent to sell, transfer or otherwise furnish the immediate precursors to another person with the knowledge that they will be used to manufacture phencyclidine is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16 months, two, or three years.

(e) This section does not apply to drug manufacturers licensed by this state or persons authorized by regulation of the Board of Pharmacy to possess those substances or combinations of substances.

1 SEC. 182. *Section 11383.7 of the Health and Safety Code is*
2 *amended to read:*

3 11383.7. (a) Any person who possesses both methylamine and
4 phenyl-2-propanone (phenylacetone) at the same time with the
5 intent to sell, transfer, or otherwise furnish those chemicals to
6 another person with the knowledge that they will be used to
7 manufacture methamphetamine, or who possesses both ethylamine
8 and phenyl-2-propanone (phenylacetone) at the same time with
9 the intent to sell, transfer, or otherwise furnish those chemicals to
10 another person with the knowledge that they will be used to
11 manufacture methamphetamine is guilty of a felony and shall be
12 punished by imprisonment ~~in the state prison pursuant to~~
13 *subdivision (h) of Section 1170 of the Penal Code* for 16 months,
14 two, or three years.

15 (b) (1) Any person who possesses ephedrine or
16 pseudoephedrine, or any salts, isomers, or salts of isomers of
17 ephedrine or pseudoephedrine, or who possesses a substance
18 containing ephedrine or pseudoephedrine, or any salts, isomers,
19 or salts of isomers of ephedrine or pseudoephedrine, or who
20 possesses at the same time any of the following, or a combination
21 product thereof, with the intent to sell, transfer, or otherwise furnish
22 those chemicals, substances, or products to another person with
23 the knowledge that they will be used to manufacture
24 methamphetamine or any of its analogs specified in subdivision
25 (d) of Section 11055 is guilty of a felony and shall be punished by
26 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
27 *Section 1170 of the Penal Code* for 16 months, two, or three years:

28 (A) Ephedrine, pseudoephedrine, norpseudoephedrine,
29 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,
30 N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic
31 acid.

32 (B) Ephedrine, pseudoephedrine, norpseudoephedrine,
33 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,
34 N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride
35 and hydrogen gas.

36 (C) Ephedrine, pseudoephedrine, norpseudoephedrine,
37 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,
38 N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus
39 pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish that chemical, product, or substance to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish any of the compounds to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish these substances to another person with the knowledge that they will be used to manufacture methamphetamine is guilty of a felony and shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal Code* for 16 months, two, or three years.

(e) Any person who possesses essential chemicals sufficient to manufacture hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish those chemicals to another

1 person with the knowledge that they will be used to manufacture
2 methamphetamine is guilty of a felony and shall be punished by
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170 of the Penal Code* for 16 months, two, or three years.

5 (f) Any person who possesses any compound or mixture
6 containing ephedrine, pseudoephedrine, norpseudoephedrine,
7 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,
8 hydriodic acid or a reducing agent, thionyl chloride, or phosphorus
9 pentachloride, with the intent to sell, transfer, or otherwise furnish
10 that compound or mixture to another person with the knowledge
11 that they will be used to manufacture methamphetamine is guilty
12 of a felony and shall be punished by imprisonment ~~in the state~~
13 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
14 *Code* for 16 months, two, or three years.

15 (g) For purposes of this section, a “reducing agent” for the
16 purposes of manufacturing methamphetamine means an agent that
17 causes reduction to occur by either donating a hydrogen atom to
18 an organic compound or by removing an oxygen atom from an
19 organic compound.

20 (h) This section does not apply to drug manufacturers licensed
21 by this state or persons authorized by regulation of the Board of
22 Pharmacy to possess those substances or combinations of
23 substances.

24 *SEC. 183. Section 12401 of the Health and Safety Code is*
25 *amended to read:*

26 12401. Every person who is found guilty of a felony as
27 specified in this part is punishable by imprisonment ~~in the state~~
28 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
29 *Code*, or in a county jail not exceeding one year, or by fine not
30 exceeding ten thousand dollars (\$10,000), or by both such fine and
31 imprisonment.

32 *SEC. 184. Section 12700 of the Health and Safety Code is*
33 *amended to read:*

34 12700. (a) Except as provided in Section 12702 and
35 subdivision (b), a person who violates any provision of this part,
36 or any regulations issued pursuant to this part, is guilty of a
37 misdemeanor, and upon conviction shall be punished by a fine of
38 not less than five hundred dollars (\$500) or more than one thousand
39 dollars (\$1,000), or by imprisonment in the county jail for not
40 exceeding one year, or by both that fine and imprisonment.

1 (b) A person who violates any provision of this part, or any
2 regulations issued pursuant to this part, by possessing dangerous
3 fireworks shall be subject to the following:

4 (1) A person who possesses a gross weight, including packaging,
5 of less than 25 pounds of unaltered dangerous fireworks, as defined
6 in Section 12505, is guilty of a misdemeanor, and upon conviction
7 shall be punished by a fine of not less than five hundred dollars
8 (\$500) or more than one thousand dollars (\$1,000), or by
9 imprisonment in the county jail for not exceeding one year, or both
10 that fine and imprisonment. Upon a second or subsequent
11 conviction, a person shall be punished by a fine of not less than
12 one thousand dollars (\$1,000) or by imprisonment in a county jail
13 not exceeding one year or by both that fine and imprisonment.

14 (2) A person who possesses a gross weight, including packaging,
15 of not less than 25 pounds or more than 100 pounds of unaltered
16 dangerous fireworks, as defined in Section 12505, is guilty of a
17 public offense, and upon conviction shall be punished by
18 imprisonment in ~~the~~ a county jail for not more than one year, or
19 by a fine of not less than one thousand dollars (\$1,000) or more
20 than five thousand dollars (\$5,000), or by both that fine and
21 imprisonment.

22 (3) A person who possesses a gross weight, including packaging,
23 of not less than 100 pounds or more than 5,000 pounds of unaltered
24 dangerous fireworks, as defined in Section 12505, is guilty of a
25 public offense, and upon conviction shall be punished by
26 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
27 *Section 1170 of the Penal Code* or ~~the~~ a county jail for not more
28 than one year, or by a fine of not less than five thousand dollars
29 (\$5,000) or more than ten thousand dollars (\$10,000), or by both
30 that fine and imprisonment.

31 (4) A person who possesses a gross weight, including packaging,
32 of more than 5,000 pounds of unaltered dangerous fireworks, as
33 defined in Section 12505, is guilty of a public offense, and upon
34 conviction shall be punished by imprisonment ~~in the state prison~~
35 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
36 ~~the~~ a county jail for not more than one year, or by a fine of not
37 less than ten thousand dollars (\$10,000) or more than fifty thousand
38 dollars (\$50,000), or by both that fine and imprisonment.

(c) Subdivision (b) shall not apply to a person who holds and is operating within the scope of a valid license as described in Section 12516 or valid permit as described in Section 12522.

SEC. 185. Section 17061 of the Health and Safety Code is amended to read:

17061. (a) Any person who violates, or causes another person to violate, any provision of this part is guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000), or imprisonment for not more than 180 days, or both, for each violation of this part, provided that the violation does not cause personal injury to any person.

(b) Any person who willfully violates, or causes another person to violate, any provision of this part, provided that the violation causes personal injury to any person, is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for two, three, or four years, or in a county jail not exceeding one year, or by a fine of not less than four thousand dollars (\$4,000), but not exceeding ten thousand dollars (\$10,000), or by both *that* fine and imprisonment for each violation, or each day of a continuing violation, causing personal injury. This subdivision shall not be construed to preclude, or in any way limit, the applicability of any other law in any criminal prosecution.

(c) Any person who violates any provision of this part shall be liable for a civil penalty of not less than three hundred dollars (\$300), nor more than one thousand dollars (\$1,000), for each violation or for each day of a continuing violation. The amount of the civil penalty may be doubled, to a limit of not more than ten thousand dollars (\$10,000), for each violation or for each day of a continuing violation if the court determines that the violation was willful, or if the court finds that the person received notice from an enforcement agency within the prior three years regarding any employee housing owned or operated by that person, and the violations are so extensive and of such a nature that the immediate health and safety of the residents or the public is endangered or has been endangered. The enforcement agency, or any person or entity affected by the violation, may institute or maintain an action in the appropriate court to collect any civil penalty arising under this subdivision and may be awarded reasonable costs and

1 attorney's fees incurred in proving the existence of each violation
2 and the liability for the civil penalties.

3 *SEC. 186. Section 18124.5 of the Health and Safety Code is*
4 *amended to read:*

5 18124.5. Every person who, with intent to defraud, alters,
6 forges, counterfeits, or falsifies any certificate of title, registration
7 card, certificate, registration decal, or permit provided for by this
8 part or any comparable certificate of title, registration card,
9 certificate, decal, insignia, or label, with intent to represent it as
10 issued by the department or who alters, forges, counterfeits, or
11 falsifies with fraudulent intent any endorsement of transfer on a
12 certificate of title, or who with fraudulent intent displays or causes
13 or permits to be displayed or has in his or her possession any blank,
14 incomplete, canceled, suspended, revoked, altered, forged,
15 counterfeit, or false certificate of title, registration card, certificate,
16 registration decal, or permit or who utters, publishes, passes, or
17 attempts to pass, as true and genuine, any of the above-named
18 false, altered, forged, or counterfeited matters knowing it to be
19 false, altered, forged, or counterfeited with intent to prejudice,
20 damage, or defraud any person, or who, with fraudulent intent,
21 provides false information regarding an allegedly lost, stolen,
22 damaged, or otherwise unavailable certificate of ownership,
23 certificate of title, registration card, or statement of lien, is guilty
24 of a felony and upon conviction thereof shall be punished by
25 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
26 *Section 1170 of the Penal Code*, or ~~in the~~ a county jail for not more
27 than one year.

28 *SEC. 187. Section 25180.7 of the Health and Safety Code is*
29 *amended to read:*

30 25180.7. (a) Within the meaning of this section, a "designated
31 government employee" is any person defined as a "designated
32 employee" by Government Code Section 82019, as amended.

33 (b) Any designated government employee who obtains
34 information in the course of his or her official duties revealing the
35 illegal discharge or threatened illegal discharge of a hazardous
36 waste within the geographical area of his or her jurisdiction and
37 who knows that the discharge or threatened discharge is likely to
38 cause substantial injury to the public health or safety must, within
39 72 hours, disclose that information to the local Board of
40 Supervisors and to the local health officer. No disclosure of

1 information is required under this subdivision when otherwise
2 prohibited by law, or when law enforcement personnel have
3 determined that this disclosure would adversely affect an ongoing
4 criminal investigation, or when the information is already general
5 public knowledge within the locality affected by the discharge or
6 threatened discharge.

7 (c) Any designated government employee who knowingly and
8 intentionally fails to disclose information required to be disclosed
9 under subdivision (b) shall, upon conviction, be punished by
10 imprisonment in a county jail for not more than one year or by
11 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
12 ~~Section 1170 of the Penal Code.~~ The court may also impose upon
13 the person a fine of not less than five thousand dollars (\$5000) or
14 more than twenty-five thousand dollars (\$25,000). The felony
15 conviction for violation of this section shall require forfeiture of
16 government employment within thirty days of conviction.

17 (d) Any local health officer who receives information pursuant
18 to subdivision (b) shall take appropriate action to notify local news
19 media and shall make that information available to the public
20 without delay.

21 *SEC. 188. Section 25189.5 of the Health and Safety Code is*
22 *amended to read:*

23 25189.5. (a) The disposal of any hazardous waste, or the
24 causing thereof, is prohibited when the disposal is at a facility
25 which does not have a permit from the department issued pursuant
26 to this chapter, or at any point which is not authorized according
27 to this chapter.

28 (b) Any person who is convicted of knowingly disposing or
29 causing the disposal of any hazardous waste, or who reasonably
30 should have known that he or she was disposing or causing the
31 disposal of any hazardous waste, at a facility which does not have
32 a permit from the department issued pursuant to this chapter, or
33 at any point which is not authorized according to this chapter shall,
34 upon conviction, be punished by imprisonment in a county jail for
35 not more than one year or by ~~imprisonment in the state prison~~
36 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

37 (c) Any person who knowingly transports or causes the
38 transportation of hazardous waste, or who reasonably should have
39 known that he or she was causing the transportation of any
40 hazardous waste, to a facility which does not have a permit from

1 the department issued pursuant to this chapter, or at any point
2 which is not authorized according to this chapter, shall, upon
3 conviction, be punished by imprisonment in a county jail for not
4 more than one year or by imprisonment ~~in the state prison pursuant~~
5 *to subdivision (h) of Section 1170 of the Penal Code.*

6 (d) Any person who knowingly treats or stores any hazardous
7 waste at a facility which does not have a permit from the
8 department issued pursuant to this chapter, or at any point which
9 is not authorized according to this chapter, shall, upon conviction,
10 be punished by imprisonment in a county jail for not more than
11 one year or by imprisonment ~~in the state prison pursuant to~~
12 *subdivision (h) of Section 1170 of the Penal Code.*

13 (e) The court also shall impose upon a person convicted of
14 violating subdivision (b), (c), or (d), a fine of not less than five
15 thousand dollars (\$5,000) nor more than one hundred thousand
16 dollars (\$100,000) for each day of violation, except as further
17 provided in this subdivision. If the act which violated subdivision
18 (b), (c), or (d) caused great bodily injury, or caused a substantial
19 probability that death could result, the person convicted of violating
20 subdivision (b), (c), or (d) may be punished by imprisonment ~~in~~
21 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
22 *Penal Code* for one, two, or three years, in addition and consecutive
23 to the term specified in subdivision (b), (c), or (d), and may be
24 fined up to two hundred fifty thousand dollars (\$250,000) for each
25 day of violation.

26 (f) For purposes of this section, except as otherwise provided
27 in this subdivision, “each day of violation” means each day on
28 which a violation continues. In any case where a person has
29 disposed or caused the disposal of any hazardous waste in violation
30 of this section, each day that the waste remains disposed of in
31 violation of this section and the person has knowledge thereof is
32 a separate additional violation, unless the person has filed a report
33 of the disposal with the department and is complying with any
34 order concerning the disposal issued by the department, a hearing
35 officer, or court of competent jurisdiction.

36 *SEC. 189. Section 25189.6 of the Health and Safety Code is*
37 *amended to read:*

38 25189.6. (a) Any person who knowingly, or with reckless
39 disregard for the risk, treats, handles, transports, disposes, or stores
40 any hazardous waste in a manner which causes any unreasonable

1 risk of fire, explosion, serious injury, or death is guilty of a public
2 offense and shall, upon conviction, be punished by a fine of not
3 less than five thousand dollars (\$5,000) nor more than two hundred
4 fifty thousand dollars (\$250,000) for each day of violation, or by
5 imprisonment in a county jail for not more than one year, or by
6 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
7 *Section 1170 of the Penal Code*, or by both ~~the~~ that fine and
8 imprisonment.

9 (b) Any person who knowingly, at the time the person takes
10 the actions specified in subdivision (a), places another person in
11 imminent danger of death or serious bodily injury, is guilty of a
12 public offense and shall, upon conviction, be punished by a fine
13 of not less than five thousand dollars (\$5,000) nor more than two
14 hundred fifty thousand dollars (\$250,000) for each day of violation,
15 and by imprisonment ~~in the state prison pursuant to subdivision~~
16 *(h) of Section 1170 of the Penal Code* for ~~3, 6, or 9~~ three, six, or
17 nine years.

18 *SEC. 190. Section 25189.7 of the Health and Safety Code is*
19 *amended to read:*

20 25189.7. (a) The burning or incineration of any hazardous
21 waste, or the causing thereof, is prohibited when the burning or
22 incineration is at a facility which does not have a permit from the
23 department issued pursuant to this chapter, or at any point which
24 is not authorized according to this chapter.

25 (b) Any person who is convicted of knowingly burning or
26 incinerating, or causing the burning or incineration of, any
27 hazardous waste, or who reasonably should have known that he
28 or she was burning or incinerating, or causing the burning or
29 incineration of, any hazardous waste, at a facility which does not
30 have a permit from the department issued pursuant to this chapter,
31 or at any point which is not authorized according to this chapter,
32 shall, upon conviction, be punished by imprisonment in a county
33 jail for not more than one year or by imprisonment ~~in the state~~
34 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
35 *Code*.

36 (c) The court also shall impose upon a person convicted of
37 violating subdivision (b) a fine of not less than five thousand
38 dollars (\$5,000) nor more than one hundred thousand dollars
39 (\$100,000) for each day of violation, except as otherwise provided
40 in this subdivision. If the act which violated subdivision (b) caused

great bodily injury or caused a substantial probability that death could result, the person convicted of violating subdivision (b) may be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for one, two, or three years, in addition and consecutive to the term specified in subdivision (b), and may be fined up to two hundred fifty thousand dollars (\$250,000) for each day of violation.

SEC. 191. Section 25190 of the Health and Safety Code is amended to read:

25190. Except as otherwise provided in Sections 25189.5, 25189.6, 25189.7, and 25191, any person who violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, is, upon conviction, guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for up to six months ~~in the a county jail~~ or by both that fine and imprisonment.

If the conviction is for a second or subsequent violation, the person shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16, 20, or 24 months. The court shall also impose upon the person a fine of not less than five thousand dollars (\$5,000) or more than twenty-five thousand dollars (\$25,000).

SEC. 192. Section 25191 of the Health and Safety Code is amended to read:

25191. (a) (1) Any person who knowingly does any of the acts specified in subdivision (b) shall, upon conviction, be punished by a fine of not less than two thousand dollars (\$2,000) or more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment ~~in the a county jail~~ for not more than one year, or by both that fine and imprisonment.

(2) If the conviction is for a second or subsequent violation of subdivision (b), the person shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16, 20, or 24 months, or ~~in the a county jail~~ for not more than one year, or by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) for each day of violation, or by both that fine and imprisonment.

1 (3) Each day or partial day that a violation occurs is a separate
2 violation.

3 (b) A person who does any of the following is subject to the
4 punishment prescribed in subdivision (a):

5 (1) Makes any false statement or representation in any
6 application, label, manifest, record, report, permit, notice to
7 comply, or other document filed, maintained, or used for the
8 purposes of compliance with this chapter.

9 (2) Has in his or her possession any record relating to the
10 generation, storage, treatment, transportation, disposal, or handling
11 of hazardous waste required to be maintained pursuant to this
12 chapter, that has been altered or concealed.

13 (3) Destroys, alters, or conceals any record relating to the
14 generation, storage, treatment, transportation, disposal, or handling
15 of hazardous waste required to be maintained pursuant to this
16 chapter.

17 (4) Withholds information regarding a real and substantial
18 danger to the public health or safety when that information has
19 been requested by the department, or by a local officer or agency
20 authorized to enforce this chapter pursuant to subdivision (a) of
21 Section 25180, and is required to carry out the responsibilities of
22 the department or the authorized local officer or agency pursuant
23 to this chapter in response to a real and substantial danger.

24 (5) Except as otherwise provided in this chapter, engages in
25 transportation of hazardous waste in violation of Section 25160
26 or 25161, or subdivision (a) of Section 25163, or in violation of
27 any regulation adopted by the department pursuant to those
28 provisions, including, but not limited to, failing to complete or
29 provide the manifest in the form and manner required by the
30 department.

31 (6) Except as otherwise provided in this chapter, produces,
32 receives, stores, or disposes of hazardous waste, or submits
33 hazardous waste for transportation, in violation of Section 25160
34 or 25161 or any regulation adopted by the department pursuant to
35 those sections, including, but not limited to, failing to complete,
36 provide, or submit the manifest in the form and manner required
37 by the department.

38 (7) Transports any waste, for which there is provided a manifest,
39 if the transportation is in violation of this chapter or the regulations
40 adopted by the department pursuant thereto.

1 (8) Violates Section 25162.

2 (c) (1) The penalties imposed pursuant to subdivision (a) on
3 any person who commits any of the acts specified in paragraph
4 (5), (7), or (8) of subdivision (b) shall be imposed only (A) on the
5 owner or lessee of the vehicle in which the hazardous wastes are
6 unlawfully transported, carried, or handled or (B) on the person
7 who authorizes or causes the transporting, carrying, or handling.
8 These penalties shall not be imposed on the driver of the vehicle,
9 unless the driver is also the owner or lessee of the vehicle or
10 authorized or caused the transporting, carrying, or handling.

11 (2) If any person other than the person producing the hazardous
12 waste prepares the manifest specified in Section 25160, that other
13 person is also subject to the penalties imposed on a person who
14 commits any of the acts specified in paragraph (6) of subdivision
15 (b).

16 (d) Any person who knowingly does any of the following acts,
17 each day or partial day that a violation occurs constituting a
18 separate violation, shall, upon conviction, be punished by a fine
19 of not more than five hundred dollars (\$500) for each day of
20 violation, or by imprisonment in the county jail for not to exceed
21 six months, or by both that fine and imprisonment:

22 (1) Carries or handles, or authorizes the carrying or handling
23 of, a hazardous waste without having in the driver's possession
24 the manifest specified in Section 25160.

25 (2) Transports, or authorizes the transportation of, hazardous
26 waste without having in the driver's possession a valid registration
27 issued by the department pursuant to Section 25163.

28 (e) Whenever any person is prosecuted for a violation pursuant
29 to paragraph (5), (6), (7), or (8) of subdivision (b), subdivision (d),
30 or subdivision (c) of Section 25189.5, the prosecuting attorney
31 may take appropriate steps to make the owner or lessee of the
32 vehicle in which the hazardous wastes are unlawfully transported,
33 carried, or handled, the driver of the vehicle, or any other person
34 who authorized or directed the loading, maintenance, or operation
35 of the vehicle, who is reasonably believed to have violated these
36 provisions, a codefendant. If a codefendant is held solely
37 responsible and found guilty, the court may dismiss the charge
38 against the person who was initially so charged.

39 *SEC. 193. Section 25395.13 of the Health and Safety Code is*
40 *amended to read:*

1 25395.13. (a) Any private site manager or member of a private
2 site management team who commits any of the following acts shall
3 be punished, upon conviction, by a fine of not less than two
4 thousand dollars (\$2,000) or by imprisonment in the county jail
5 for not more than one year, or both that fine and imprisonment, if
6 the private site manager or any member of a private site
7 management team does any of the following:

8 (1) Knowingly makes any materially false or inaccurate
9 statement in any application, record, report, certification, plan,
10 design, or statement that the private site manager or the private
11 site management team submits to the department.

12 (2) Knowingly makes any materially false or inaccurate
13 statement in any record, report, plan, file, log, or register that the
14 private site management team keeps, or is required to keep,
15 pursuant to any law.

16 (3) Knowingly and materially falsifies, tampers with, alters,
17 destroys, or disturbs any mechanism, recovery, or control system,
18 or any monitoring device or method that the private site manager
19 or the private site management team maintains, or that is required
20 to be maintained pursuant to any law, regulation, or order for the
21 protection of the public health and safety or the environment.

22 (4) Knowingly allows or orders any of the private site
23 manager's or the private site management team's employees,
24 agents, or contractors to do any of the actions specified in
25 paragraphs (1) to (3), inclusive.

26 (b) Any private site manager or member of a site private
27 management team who knowingly, or with reckless disregard for
28 the risk, treats, handles, transports, disposes of, or stores any
29 hazardous substance in a manner that causes any unreasonable risk
30 of fire, explosion, serious injury, or death, is guilty of a public
31 offense and shall, upon conviction, be punished by a fine of not
32 less than five thousand dollars (\$5,000) nor more than two hundred
33 fifty thousand dollars (\$250,000) for each day of a violation, by
34 imprisonment in the county jail for not more than one year, by
35 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
36 *Section 1170 of the Penal Code* for 16, 24, or 36 months, or by
37 both that fine and imprisonment.

38 (c) Any private site manager or member of a private site
39 management team who knowingly, at the time the manager or
40 member takes any of the actions specified in subdivision (b), places

another person in imminent danger of death or serious bodily injury, is guilty of a public offense and shall, upon conviction, be punished by a fine of not less than five thousand dollars (\$5,000) or more than two hundred fifty thousand dollars (\$250,000) for each day of the violation.

(d) Each day that a violation of subdivision (a) occurs, or continues to occur, shall be considered a separate offense. A fine imposed pursuant to subdivision (a) shall not exceed, in the aggregate, twenty-five thousand dollars (\$25,000), and the term of imprisonment shall not exceed, in the aggregate, one year.

(e) Notwithstanding any other provision of law, all penalties collected pursuant to this section shall be transferred to the department for deposit in the trust fund for expenditure by the department, upon appropriation by the Legislature, to administer and enforce this article.

SEC. 194. Section 25515 of the Health and Safety Code is amended to read:

25515. (a) A person or business who violates Section 25507 shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, by imprisonment in ~~the a~~ county jail for not more than one year, or by both the fine and imprisonment. If the conviction is for a violation committed after a first conviction under this section, the person shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16, 20, or 24 months or in ~~the a~~ county jail for not more than one year, or by both the fine and imprisonment. Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials.

(b) Notwithstanding subdivision (a), a person who knowingly fails to report, pursuant to Section 25507, an oil spill occurring in waters of the state, other than marine waters, shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) Notwithstanding subdivision (a), a person who knowingly makes a false or misleading report on an oil spill occurring in waters of the state, other than marine waters, shall, upon conviction, be punished by a fine of not more than fifty thousand dollars (\$50,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(d) This section does not preclude prosecution or sentencing under other provisions of law.

SEC. 195. Section 25541 of the Health and Safety Code is amended to read:

25541. Any person or stationary source who knowingly makes any false material statement, representation or certification in any record, report, or other document filed, maintained, or used for the purpose of compliance with this article, or destroys, alters, or conceals any such record, report, or other document filed, maintained, or used for the purpose of compliance with this article, shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, or by imprisonment in the county jail for not more than one year, or by both the fine and the imprisonment.

If the conviction is for a violation committed after a first conviction under this section, the person or stationary source shall be punished by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for one, two, or three years or ~~in the~~ a county jail for not more than one year, or both the fine and imprisonment.

Furthermore, if the violation results in, or significantly contributes to, an emergency, including a fire, to which the county or city is required to respond, the person or stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the acutely hazardous materials.

SEC. 196. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a

1 misdemeanor and is punishable by a fine of not more than
2 seventy-five thousand dollars (\$75,000), or imprisonment in a
3 county jail for not more than one year, or by both that fine and
4 imprisonment.

5 (b) Any person who willfully and intentionally, or with reckless
6 disregard for the risk of great bodily injury, as defined by Section
7 12022.7 of the Penal Code, to, or death of, any person, emits an
8 air contaminant in violation of Section 41700 that results in any
9 unreasonable risk of great bodily injury to, or death of, any person,
10 is guilty of a public offense and is punishable by a fine of not more
11 than one hundred twenty-five thousand dollars (\$125,000), or
12 imprisonment in a county jail for not more than one year, or by
13 both that fine and imprisonment. However, if the defendant is a
14 corporation, the maximum fine may be up to five hundred thousand
15 dollars (\$500,000).

16 (c) Any person who willfully and intentionally, or with reckless
17 disregard for the risk of great bodily injury, as defined by Section
18 12022.7 of the Penal Code, to, or death of, any person emits an air
19 contaminant in violation of Section 41700 that causes great bodily
20 injury to, or death of, any person is guilty of a public offense, and
21 is punishable by a fine of not more than two hundred fifty thousand
22 dollars (\$250,000), or imprisonment in a county jail for not more
23 than one year, or both that fine and imprisonment, or is punishable
24 by a fine of not more than two hundred fifty thousand dollars
25 (\$250,000), or imprisonment ~~in the state prison pursuant to~~
26 *subdivision (h) of Section 1170 of the Penal Code*, or by both that
27 fine and imprisonment. If the defendant is a corporation, the
28 maximum fine may be up to one million dollars (\$1,000,000).

29 (d) Each day during any portion of which a violation occurs
30 constitutes a separate offense.

31 (e) This section does not preclude punishment under Section
32 189 or 192 of the Penal Code or any other provision of law that
33 provides a more severe punishment.

34 (f) For the purposes of this section:

35 (1) "Great bodily injury" means great bodily injury as defined
36 by Section 12022.7 of the Penal Code.

37 ~~(2) "Imprisonment in state prison" means imprisonment in the~~
38 ~~state prison for 16 months, or two or three years.~~

39 ~~(3)~~

(2) “Unreasonable risk of great bodily injury or death” means substantial probability of great bodily injury or death.

SEC. 197. Section 44209 of the Health and Safety Code is amended to read:

44209. Any person who falsifies any test record or report which has been submitted to any other person, the department, or the state board pursuant to this chapter is subject to punishment by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000), imprisonment in a county jail for not more than one year, imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by both that fine and imprisonment.

SEC. 198. Section 100895 of the Health and Safety Code is amended to read:

100895. (a) Any person who knowingly does any of the following acts may, upon conviction, be punished by a fine of not more than twenty-five thousand dollars (\$25,000) for each day of violation, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment:

(1) Makes any false statement or representation in any application, record, report, or other document submitted, maintained, or used for the purposes of compliance with this article.

(2) Has in his or her possession any record required to be maintained pursuant to this article that has been altered or concealed.

(3) Destroys, alters, or conceals any record required to be maintained pursuant to this article.

(4) Withholds information regarding an imminent and substantial danger to the public health or safety when the information has been requested by the department in writing and is required to carry out the department’s responsibilities pursuant to this article.

(b) A second or subsequent violation of subdivision (a) is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for 16, 20, or 24 months or in a county jail for not more than one year, by a fine of not less than two thousand dollars (\$2,000) or more than fifty thousand dollars (\$50,000) per day of violation, or by both that imprisonment and fine.

1 (c) An ELAP certified or NELAP accredited laboratory, upon
2 suspension, revocation, or withdrawal of its ELAP certification or
3 NELAP accreditation, shall do all of the following:

4 (1) Discontinue use of all catalogs, advertising, business
5 solicitations, proposals, quotations, or their materials that contain
6 reference to their past certification or accreditation status.

7 (2) Return its ELAP certificate or its NELAP accreditation to
8 the department.

9 (3) Cease all testing of samples for regulatory purposes.

10 (d) The penalties cited in subdivisions (a) and (b) shall also
11 apply to NELAP accredited laboratories.

12 *SEC. 199. Section 109335 of the Health and Safety Code is*
13 *amended to read:*

14 109335. The failure of any individual, person, firm, association,
15 or other entity representing himself, or itself, as engaged in the
16 diagnosis, treatment, alleviation, or cure of cancer to comply with
17 any of the regulations adopted under this article and Article 1
18 (commencing with Section 109250) is a misdemeanor. A third,
19 and subsequent violations, of this section is a felony, *punishable*
20 *by imprisonment pursuant to subdivision (h) of Section 1170 of*
21 *the Penal Code.*

22 This article and Article 1 (commencing with Section 109250)
23 shall not apply to any person who depends exclusively upon prayer
24 for healing in accordance with the teachings of a bona fide religious
25 sect, denomination, or organization, nor practitioner thereof.

26 *SEC. 200. Section 115215 of the Health and Safety Code is*
27 *amended to read:*

28 115215. (a) Any person who violates this chapter, or rules,
29 regulations, or orders in effect adopted pursuant to this chapter, is
30 guilty of a misdemeanor and shall, upon conviction, be punished
31 by a fine not to exceed one thousand dollars (\$1,000) or by
32 imprisonment in ~~the~~ a county jail for a period not to exceed 180
33 days, or by both the fine and imprisonment.

34 (b) Any person who knowingly disposes or causes the disposal
35 of any radioactive material regulated by this chapter, or who
36 reasonably should have known that the person was disposing or
37 causing the disposal of the material, at a facility within the state
38 that does not have a license for disposal issued by the department
39 pursuant to this chapter, or at any point in the state that is not
40 authorized according to this chapter, or by any other local, state,

1 or federal agency having authority over radioactive materials, and
2 is in violation of this chapter, or any regulation or order adopted
3 pursuant to this chapter, is guilty of a public offense, and upon
4 conviction, may be punished as follows:

5 (1) If the disposal is found to have caused a substantial danger
6 to the public health or safety, the person may be punished by
7 imprisonment in ~~the a~~ county jail for not more than one year or
8 by imprisonment in ~~the state prison~~ pursuant to subdivision (h) of
9 Section 1170 of the Penal Code for 16, 24, or 36 months, except
10 as otherwise provided in paragraph (2). The court may also impose,
11 upon a person convicted of violating this subdivision, a fine of not
12 more than one hundred thousand dollars (\$100,000) for each day
13 of violation, except as otherwise provided in paragraph (2).

14 (2) If the act that violated this subdivision caused great bodily
15 injury or caused a substantial probability that death could result,
16 the person convicted may be punished by imprisonment in ~~the~~
17 ~~state prison~~ pursuant to subdivision (h) of Section 1170 of the
18 Penal Code for three, five, or seven years and may be fined not
19 more than two hundred fifty thousand dollars (\$250,000) for each
20 day of violation.

21 (c) Any person who knowingly transports or causes the
22 transportation of any radioactive material regulated by this chapter,
23 or who reasonably should have known that the person was causing
24 the transportation of the material, to a facility in the state that does
25 not have a license from the department issued pursuant to this
26 chapter, to any point in the state that is not authorized by this
27 chapter, or to any point in the state that is not authorized by any
28 other local, state, or federal agency having authority over
29 radioactive materials, and is in violation of this chapter, or any
30 regulation or order adopted pursuant to this chapter, is guilty of a
31 public offense and, upon conviction, may be punished as follows:

32 (1) If the transportation is found to have caused a substantial
33 danger to the public health or safety, the person may be punished
34 by imprisonment in the county jail for not more than one year or
35 by imprisonment in the state prison pursuant to subdivision (h) of
36 Section 1170 of the Penal Code for 16, 24, or 36 months, except
37 as otherwise provided in paragraph (2). The court may also impose,
38 upon a person convicted of violating this subdivision, a fine of not
39 more than one hundred thousand dollars (\$100,000) for each day
40 of violation, except as provided by paragraph (2).

1 (2) If the transportation that violated this subdivision caused
2 great bodily injury or caused a substantial probability that death
3 could result, the person convicted may be punished by
4 imprisonment in the state prison *pursuant to subdivision (h) of*
5 *Section 1170 of the Penal Code* for three, five, or seven years and
6 may be fined not more than two hundred fifty thousand dollars
7 (\$250,000) for each day of violation.

8 (d) Notwithstanding any other provision of this chapter,
9 radioactive materials used in medical treatment or result from
10 medical treatment, that are disposed, stored, handled, or transported
11 in a manner authorized pursuant to this chapter, are exempt from
12 subdivisions (b) and (c).

13 (e) Notwithstanding subdivision (a), any person who violates
14 any provision of this chapter relating to mammography or
15 regulations adopted pursuant to those provisions is guilty of a
16 misdemeanor and shall, upon conviction thereof, be punished by
17 a fine not to exceed five thousand dollars (\$5,000), per day of
18 offense, or by imprisonment in the county jail not to exceed 180
19 days, or both the fine and imprisonment.

20 *SEC. 201. Section 116730 of the Health and Safety Code is*
21 *amended to read:*

22 116730. (a) Any person who knowingly does any of the
23 following acts may, upon conviction, be punished by a fine of not
24 more than twenty-five thousand dollars (\$25,000) for each day of
25 violation, by imprisonment in a county jail not to exceed one year,
26 or by both that fine and imprisonment:

27 (1) Makes any false statement or representation in any
28 application, record, report, or other document submitted,
29 maintained, or used for the purposes of compliance with this
30 chapter.

31 (2) Has in his or her possession any record required to be
32 maintained pursuant to this chapter that has been altered or
33 concealed.

34 (3) Destroys, alters, or conceals any record required to be
35 maintained pursuant to this chapter.

36 (4) Withholds information regarding an imminent and substantial
37 danger to the public health or safety when the information has
38 been requested by the department in writing and is required to
39 carry out the department's responsibilities pursuant to this chapter
40 in response to an imminent and substantial danger.

1 (5) Violates an order issued by the department pursuant to this
2 chapter that has a substantial probability of presenting an imminent
3 danger to the health of persons.

4 (6) Operates a public water system without a permit issued by
5 the department pursuant to this chapter.

6 (b) A second or subsequent violation of subdivision (a) is
7 punishable by imprisonment ~~in the state prison pursuant to~~
8 *subdivision (h) of Section 1170 of the Penal Code* for 16, 20, or
9 24 months or imprisonment in a county jail for not more than one
10 year, by a fine of not less than two thousand dollars (\$2,000) or
11 more than fifty thousand dollars (\$50,000) per day of violation,
12 or by both that imprisonment and fine.

13 *SEC. 202. Section 116750 of the Health and Safety Code is*
14 *amended to read:*

15 116750. (a) Any person who tampers with a public water
16 system is guilty of a felony and shall be punished by imprisonment
17 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
18 *the Penal Code* for three, four, or five years, subject to a fine not
19 to exceed thirty thousand dollars (\$30,000), or both.

20 (b) Any person who tampers with or makes a threat to tamper
21 with a public water system is guilty of a felony and shall be
22 punished by imprisonment ~~in the state prison pursuant to~~
23 *subdivision (h) of Section 1170 of the Penal Code* for 16 months,
24 two, or three years, subject to a fine not to exceed twenty thousand
25 dollars (\$20,000), or both.

26 (c) For purposes of this section, the term “tamper” means either
27 of the following:

28 (1) To introduce a contaminant into a public water system with
29 the intention of harming persons.

30 (2) To otherwise interfere with the operation of a public water
31 system with the intention of harming persons.

32 *SEC. 203. Section 118340 of the Health and Safety Code is*
33 *amended to read:*

34 118340. (a) No person shall, transport, store, treat, dispose,
35 or cause the treatment or disposal of medical waste in a manner
36 not authorized by his or her permit or registration, this part, or the
37 regulations adopted pursuant to this part.

38 (b) Any person who stores, treats, disposes, or causes the
39 treatment or disposal of medical waste in violation of this part or

the regulations adopted pursuant to this part is guilty of a public offense as follows:

(1) For a small quantity generator, a first offense is an infraction and is punishable by a fine of not more than one thousand dollars (\$1,000).

(2) For a person other than a small quantity generator, a first offense is a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000), or by up to one year in county jail, or by both the fine and imprisonment.

(c) A person who is convicted of a second or subsequent violation of subdivision (a) within three years of the prior conviction shall be punished by imprisonment in ~~the a~~ county jail for not more than one year, or by imprisonment ~~in state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for one, two, or three years, or by a fine of not less than five thousand dollars (\$5,000), or more than twenty-five thousand dollars (\$25,000), or by both ~~the~~ *that* fine and imprisonment. This section shall not apply unless any prior conviction is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact. If the defendant is a corporation that operates medical facilities in more than one geographic location, this subdivision shall apply only if the offense involves an adjacent facility involved in the prior conviction.

(d) Any person who knowingly treats or disposes, or causes the treatment or disposal of, medical waste in violation of this part shall be punished by imprisonment in ~~the a~~ county jail for not more than one year, or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for one, two, or three years, or by a fine of not less than five thousand dollars (\$5,000), or more than twenty-five thousand dollars (\$25,000), or by both ~~the~~ *that* fine and imprisonment.

(e) This section does not apply to a person transporting medical waste who is required to be a registered hazardous waste transporter. Those persons are subject to penalties for violations pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 of Division 20.

SEC. 204. Section 131130 of the Health and Safety Code is amended to read:

131130. (a) Any person who willfully sells, keeps for sale, or offers for sale any food, drug, device, or cosmetic knowing, after

1 a written notice from either (1) a manufacturer, wholesaler,
2 distributor, or importer, or (2) the department or a local health
3 officer that the product linked to an outbreak of illness, injury, or
4 product tampering is being ordered removed from sale by the
5 department pursuant to Section 131080, shall, upon conviction,
6 be punished by a fine of not less than two thousand dollars (\$2,000)
7 nor more than ten thousand dollars (\$10,000) for each day of
8 violation, or by imprisonment in the county jail for not more than
9 one year, or by both a fine and imprisonment.

10 (b) If a second or subsequent violation is committed after a
11 previous conviction under this section has become final, the person
12 shall be punished by a fine of not less than five thousand dollars
13 (\$5,000) nor more than twenty-five thousand dollars (\$25,000) for
14 each day of violation, or by imprisonment ~~in the state prison~~
15 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
16 by both a fine and imprisonment.

17 (c) Notwithstanding any other provision of law, the court may
18 suspend the minimum fines provided for in this section if it
19 determines that there are circumstances in mitigation and the court
20 states on the record its reasons for suspending the minimum fine.

21 *SEC. 205. Section 700 of the Insurance Code is amended to*
22 *read:*

23 700. (a) A person shall not transact any class of insurance
24 business in this state without first being admitted for that class.
25 Except for the State Compensation Insurance Fund as authorized
26 by Sections 11770 and 11778 to 11780.5, inclusive, admission is
27 secured by procuring a certificate of authority from the
28 commissioner. The certificate shall not be granted until the
29 applicant conforms to the requirements of this code and of the laws
30 of this state prerequisite to its issue.

31 (b) The unlawful transaction of insurance business in this state
32 in willful violation of the requirement for a certificate of authority
33 is a public offense punishable by imprisonment ~~in the state prison~~
34 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
35 in a county jail not exceeding one year, or by fine not exceeding
36 one hundred thousand dollars (\$100,000), or by both that fine and
37 imprisonment, and shall be enjoined by a court of competent
38 jurisdiction on petition of the commissioner.

39 (c) After the issuance of a certificate of authority, the holder
40 shall continue to comply with the requirements as to its business

1 set forth in this code and in the other laws of this state, including,
2 but not limited to, Chapter 5 (commencing with Section 1631),
3 with regard to employees or contractors who solicit, negotiate, or
4 effect insurance.

5 (d) Where a hearing is held under this section the proceedings
6 shall be conducted in accordance with Chapter 5 (commencing
7 with Section 11500) of Part 1 of Division 3 of Title 2 of the
8 Government Code, and the commissioner shall have all the powers
9 granted therein.

10 (e) The commissioner shall either issue or deny an application
11 for a certificate of authority within 180 calendar days after the date
12 of the application.

13 (f) The commissioner and his or her authorized representative
14 shall be prohibited from seeking a waiver to extend the 180
15 calendar day period specified in subdivision (e), nor shall the
16 applicant be permitted to waive that period.

17 *SEC. 206. Section 750 of the Insurance Code is amended to*
18 *read:*

19 750. (a) Except as provided in Section 750.5, any person acting
20 individually or through his or her employees or agents, who
21 engages in the practice of processing, presenting, or negotiating
22 claims, including claims under policies of insurance, and who
23 offers, delivers, receives, or accepts any rebate, refund,
24 commission, or other consideration, whether in the form of money
25 or otherwise, as compensation or inducement to or from any person
26 for the referral or procurement of clients, cases, patients, or
27 customers, is guilty of a crime.

28 (b) A violation of subdivision (a) is punishable upon a first
29 conviction by imprisonment in ~~the a~~ county jail for not more than
30 one year, or by imprisonment ~~in the state prison~~ pursuant to
31 *subdivision (h) of Section 1170 of the Penal Code*, or by a fine not
32 exceeding fifty thousand dollars (\$50,000), or by both that
33 imprisonment and fine. A second or subsequent conviction is
34 punishable by imprisonment ~~in the state prison~~ pursuant to
35 *subdivision (h) of Section 1170 of the Penal Code* or by *that*
36 *imprisonment in the state prison* and a fine of fifty thousand dollars
37 (\$50,000).

38 (c) Nothing in this section shall prohibit a licensed collection
39 or lien agency from receiving a commission on the collection of
40 delinquent debts nor prohibits the agency from paying its

1 employees a commission for obtaining clients seeking collection
2 on delinquent debts.

3 (d) Nothing in this section is intended to limit, restrict, or in any
4 way apply to, the rebating of commissions by insurance agents or
5 brokers, as authorized by Proposition 103, enacted by the people
6 at the November 8, 1988, general election.

7 *SEC. 207. Section 833 of the Insurance Code is amended to*
8 *read:*

9 833. Every person who commits any of the acts specified in
10 this section is guilty of a public offense and punishable by a fine
11 not exceeding ten thousand dollars (\$10,000), or by imprisonment
12 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
13 ~~the Penal Code~~, or in a county jail not exceeding one year, or by
14 both ~~such~~ that fine and imprisonment.

15 (a) Knowingly authorizing, directing, aiding, causing, or
16 assisting in causing the issuance, execution, or sale of, any security,
17 in nonconformity with a permit of the commissioner then in effect
18 and authorizing such issuance, or contrary to the provisions of this
19 article.

20 (b) Knowingly making any false statement or representation in
21 any application to the commissioner, or in any proceeding before
22 him, or in any examination, audit, or investigation made by him,
23 or by his authority.

24 (c) With knowledge of the falsity, causing to be filed in the
25 office of the commissioner any false statement or representation
26 concerning an insurer, the property which the insurer then holds
27 or proposes to acquire, the insurer's officers, the insurer's financial
28 condition or other affairs, or the insurer's proposed plan of
29 business.

30 (d) With knowledge of the falsity of any such statement or
31 representation, causing any security to be issued, executed, or sold
32 without first informing the commissioner of the falsity of such
33 statement in writing.

34 (e) Directly or indirectly, knowingly causing or assisting in
35 causing any part of the proceeds from the sale of any security to
36 be applied to any purpose contrary to the provisions of the permit
37 authorizing the issuance of such security, or to any purpose in
38 excess of the amount specified in such permit for such purpose.

39 (f) Selling a security with knowledge that it has been issued or
40 executed in violation of any of the provisions of this article.

(g) Causing a writing concerning a security to be issued, circulated, or published while having knowledge that such matter contains any statement that is false, misleading, or otherwise likely to deceive a reader thereof.

(h) In any respect, willfully violating or failing to comply with any of the provisions of this article.

(i) In any other respect, willfully violating or neglecting to comply with any part of an order or permit of the commissioner under the provisions of this article.

(j) Conspiring with one or more other persons to violate any permit or order issued by the commissioner, or any of the provisions of this article.

SEC. 208. Section 1043 of the Insurance Code is amended to read:

1043. In any proceeding under this article, the commissioner, as conservator or as liquidator, may, subject to the approval of said court, and subject to such liens as may be necessary mutualize or reinsure the business of such person, or enter into rehabilitation agreements. No commissioner who acts as conservator of such person or who mutualizes, merges or reinsures the business of such person or who enters into rehabilitation agreements affecting such person, and no deputy commissioner who has participated in the administration of the affairs of such person for the commissioner as conservator shall for a period of two years from and after the effective date of such mutualization, reinsurance or rehabilitation become an officer or director of, or serve as an officer or director of, or serve in any position of gain or profit in, any company formed in whole or in part of the assets or funds, or any part of the assets or funds of such mutualized, merged, reinsured or rehabilitated person.

Every person violating this provision is guilty of a public offense and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or in the a~~ county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both ~~such that~~ fine and imprisonment.

Such rehabilitation or reinsurance agreements shall provide that, subsequent to the date thereof and for such period of time as the commissioner may determine, no investment or reinvestment of

1 the assets of the person rehabilitated or reinsured shall be made
2 without first obtaining the written approval of the commissioner.

3 Every party to such agreement, and every director, officer, agent
4 and employee of such person, and every other person who
5 knowingly in violation thereof directs or aids or assists in causing
6 to be made an investment or reinvestment of any of said assets
7 without first having obtained the written approval of the
8 commissioner, or who makes such investment or reinvestment in
9 nonconformity with the written approval of the commissioner then
10 in effect authorizing such investment or reinvestment, is guilty of
11 a public offense and shall be punished by imprisonment ~~in the state~~
12 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
13 ~~Code, or in the a county jail or by a fine not exceeding ten thousand~~
14 ~~dollars (\$10,000), or by both such that fine and imprisonment.~~

15 *SEC. 209. Section 1215.10 of the Insurance Code is amended*
16 *to read:*

17 1215.10. (a) Any insurer that fails to file a statement, report,
18 or request for approval required by this article in a timely manner
19 shall be subject to the late filing fees set forth in Section 924.

20 (b) Every director or officer of an insurance holding company
21 system who knowingly violates, participates in, or assents to, or
22 who knowingly permits any of the officers or agents of the insurer
23 to engage in transactions or make investments which have not been
24 properly reported or submitted pursuant to Sections 1215.4 and
25 1215.5, or which violate this article, shall pay, in their individual
26 capacity, a civil forfeiture of not more than fifty thousand dollars
27 (\$50,000) per violation, after notice and hearing before the
28 commissioner. In determining the amount of the civil forfeiture,
29 the commissioner shall take into account the appropriateness of
30 the forfeiture with respect to the gravity of the violation, the history
31 of previous violations, and any other matters as justice may require.

32 (c) Whenever it appears to the commissioner that any insurer
33 subject to this article or any director, officer, employee, or agent
34 thereof has engaged in any transaction or entered into a contract
35 which is subject to Section 1215.5 and which would not have been
36 approved had approval been requested, the commissioner may
37 order the insurer to cease and desist immediately any further
38 activity under that transaction or contract. After notice and hearing
39 the commissioner may also order the insurer to void any contracts

1 and restore the status quo if this action is in the best interest of the
2 policyholders, creditors, or the public.

3 (d) Whenever it appears to the commissioner that any insurer
4 or any director, officer, employee or agent thereof has committed
5 a willful violation of this article, the commissioner may cause
6 criminal proceedings to be instituted in the county in which the
7 principal office of the insurer is located, or if such insurer has no
8 such office in the state then by the Attorney General against such
9 insurer or the responsible director, officer, employee, or agent
10 thereof. Any insurer which willfully violates this article shall be
11 fined not more than ten thousand dollars (\$10,000). Any individual
12 who willfully violates this article shall be fined not more than three
13 thousand dollars (\$3,000) or, if such willful violation involves the
14 deliberate perpetration of a fraud upon the commissioner,
15 ~~imprisoned in the state prison pursuant to subdivision (h) of Section~~
16 ~~1170 of the Penal Code~~, or both.

17 (e) Any officer, director, or employee of an insurance holding
18 company system who willfully and knowingly subscribes to or
19 makes or causes to be made any materially false statements, reports,
20 or filings with the intent to deceive the commissioner in the
21 performance of his or her duties under this article, upon conviction
22 thereof, shall be fined not more than three thousand dollars (\$3,000)
23 or, if the willful violation of this subdivision involves the deliberate
24 perpetration of a fraud upon the commissioner, ~~imprisoned in the~~
25 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
26 ~~Penal Code~~, or both ~~that~~ imprisonment and fine. Any fines imposed
27 shall be paid by the officer, director, or employee in his or her
28 individual capacity.

29 SEC. 210. Section 1764.7 of the Insurance Code is amended
30 to read:

31 1764.7. Any person who willfully violates Section 1760.5,
32 1761, 1763, 1764, 1764.1, 1764.2, 1764.3, 1764.4, 1765.1, 1765.2,
33 1767, or 1780 is guilty of a public offense and punishable by
34 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
35 ~~Section 1170 of the Penal Code~~, or in a county jail for not
36 exceeding one year or by fine not exceeding ten thousand dollars
37 (\$10,000), or by both.

38 SEC. 211. Section 1814 of the Insurance Code is amended to
39 read:

1 1814. The violation of any foregoing provision of this chapter,
2 or of any rule of the commissioner made pursuant thereto, is a
3 public offense, punishable by fine not exceeding ten thousand
4 dollars (\$10,000), or by imprisonment ~~in the state prison pursuant~~
5 *to subdivision (h) of Section 1170 of the Penal Code*, or in the
6 county jail not exceeding one year, or by both ~~such~~ *that* fine and
7 imprisonment.

8 *SEC. 212. Section 1871.4 of the Insurance Code is amended*
9 *to read:*

10 1871.4. (a) It is unlawful to do any of the following:

11 (1) Make or cause to be made a knowingly false or fraudulent
12 material statement or material representation for the purpose of
13 obtaining or denying any compensation, as defined in Section 3207
14 of the Labor Code.

15 (2) Present or cause to be presented a knowingly false or
16 fraudulent written or oral material statement in support of, or in
17 opposition to, a claim for compensation for the purpose of
18 obtaining or denying any compensation, as defined in Section 3207
19 of the Labor Code.

20 (3) Knowingly assist, abet, conspire with, or solicit a person in
21 an unlawful act under this section.

22 (4) Make or cause to be made a knowingly false or fraudulent
23 statement with regard to entitlement to benefits with the intent to
24 discourage an injured worker from claiming benefits or pursuing
25 a claim.

26 For the purposes of this subdivision, “statement” includes, but
27 is not limited to, a notice, proof of injury, bill for services, payment
28 for services, hospital or doctor records, X-ray, test results,
29 medical-legal expense as defined in Section 4620 of the Labor
30 Code, other evidence of loss, injury, or expense, or payment.

31 (5) Make or cause to be made a knowingly false or fraudulent
32 material statement or material representation for the purpose of
33 obtaining or denying any of the benefits or reimbursement provided
34 in the Return-to-Work Program established under Section 139.48
35 of the Labor Code.

36 (6) Make or cause to be made a knowingly false or fraudulent
37 material statement or material representation for the purpose of
38 discouraging an employer from claiming any of the benefits or
39 reimbursement provided in the Return-to-Work Program
40 established under Section 139.48 of the Labor Code.

(b) Every person who violates subdivision (a) shall be punished by imprisonment in ~~the a~~ county jail for one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, for two, three, or five years, or by a fine not exceeding one hundred fifty thousand dollars (\$150,000) or double the value of the fraud, whichever is greater, or by both that imprisonment and fine. Restitution shall be ordered, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid. A person convicted under this section may be charged the costs of investigation at the discretion of the court.

(c) A person who violates subdivision (a) and who has a prior felony conviction of that subdivision, of former Section 556, of former Section 1871.1, or of Section 548 or 550 of the Penal Code, shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (b).

The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) This section may not be construed to preclude the applicability of any other provision of criminal law that applies or may apply to a transaction.

SEC. 213. Section 10192.165 of the Insurance Code is amended to read:

10192.165. (a) (1) As prescribed in this chapter, the commissioner shall have the administrative authority to assess penalties against issuers, brokers, agents, and other entities engaged in the business of insurance or any other person or entity for violations of this article.

(2) Upon a showing of a violation of this article in any civil action, a court may also assess the penalties prescribed in this chapter.

(3) Whenever the commissioner has reasonable cause to believe or determines after a public hearing that any issuer, agent, broker, or other person or entity engaged in the business of insurance, has violated this article he or she shall make and serve upon the issuer,

broker, or other person or entity a notice of hearing. The notice shall state the commissioner's intent to assess the administrative penalties, the time and place of the hearing, and the conduct, condition, or ground upon which the commissioner is holding the hearing and assessing the penalties. The hearing shall occur within 30 days after the notice is served. Within 30 days after the hearing the commissioner shall issue an order specifying the amount of penalties to be paid. The penalties resulting from the hearing shall be paid to the Insurance Fund.

(4) The powers vested in the commissioner by this section shall be additional to any and all powers and remedies vested in the commissioner by law.

(b) (1) Any broker, agent, or other person or entity engaged in the business of insurance, other than an issuer, who violates this article is liable for administrative penalties of no less than two hundred fifty dollars (\$250) for the first violation.

(2) Any broker, agent, other person, or other entity engaged in the business of insurance, other than an issuer, who engages in practices prohibited by this chapter a second or subsequent time or who commits a knowing violation of this article, is liable for administrative penalties of no less than one thousand dollars (\$1,000) and no more than twenty-five thousand dollars (\$25,000) for each violation.

(3) Any issuer who violates this article is liable for administrative penalties of no less than two thousand five hundred dollars (\$2,500) for the first violation.

(4) Any issuer who violates this article with a frequency as to indicate a general business practice or commits a knowing violation of this article, is liable for administrative penalties of no less than ten thousand dollars (\$10,000) and no more than one hundred thousand dollars (\$100,000) for each violation.

(c) (1) Actions for injunctive relief, penalties in the amounts specified in subdivision (a), damages, restitution, and all other remedies provided for in law, may be brought in superior court by the Attorney General, district attorney, or city attorney on behalf of the people of the State of California.

(2) The court shall award reasonable attorney's fees and costs to a prevailing plaintiff who establishes a violation of this article.

(d) In addition to any other applicable penalties, the commissioner may require issuers, agents, brokers, or other persons

1 or entities violating any provision of this article or regulations
2 promulgated pursuant to this article, to cease marketing in this
3 state any Medicare supplement policy or certificate or may require
4 the issuer, agent, broker, or other person or entity to take such
5 actions as are necessary to comply with the provisions of this
6 article, or both.

7 (e) Any person who knowingly or intentionally violates any
8 provision of this article is guilty of a public offense punishable by
9 imprisonment in a county jail not exceeding one year, or by
10 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
11 *Section 1170 of the Penal Code*, or by a fine not exceeding ten
12 thousand dollars (\$10,000), or by both that imprisonment and fine.

13 (f) (1) The requirements and remedies provided by this article
14 are in addition to any other remedies provided by law.

15 (2) If any provision of this article or the application thereof to
16 any person or circumstances is held invalid, that invalidity shall
17 not affect other provisions or applications of the article which can
18 be given effect without the invalid provision or application, and
19 to this end the provisions of this article are severable.

20 *SEC. 214. Section 11161 of the Insurance Code is amended to*
21 *read:*

22 11161. Any person violating Section 11160 is guilty of a felony
23 and punishable by a fine not exceeding ten thousand dollars
24 (\$10,000) or imprisonment ~~in the state prison pursuant to~~
25 *subdivision (h) of Section 1170 of the Penal Code*, or both.

26 *SEC. 215. Section 11162 of the Insurance Code is amended to*
27 *read:*

28 11162. It is a felony, *punishable by imprisonment pursuant to*
29 *subdivision (h) of Section 1170 of the Penal Code*, for any officer,
30 director, agent or employee of any fraternal benefit society to,
31 directly or indirectly, for himself or as partner or agent of others:

- 32 (a) Borrow any of the funds of such society.
33 (b) Become endorser or surety for loans by the society to others.
34 (c) In any manner be obligor for moneys borrowed or loaned
35 by such society.

36 *SEC. 216. Section 11163 of the Insurance Code is amended to*
37 *read:*

38 11163. It is a felony, *punishable by imprisonment pursuant to*
39 *subdivision (h) of Section 1170 of the Penal Code*, for any officer,
40 trustee, agent or employee of a fraternal benefit society to ask,

1 receive, or consent or agree to receive anything of value for
2 procuring or endeavoring to procure a loan to any person from the
3 trust funds of, or funds belonging to, a fraternal benefit society.

4 *SEC. 217. Section 11760 of the Insurance Code is amended to*
5 *read:*

6 11760. (a) It is unlawful to make or cause to be made any
7 knowingly false or fraudulent statement, whether made orally or
8 in writing, of any fact material to the determination of the premium,
9 rate, or cost of any policy of workers' compensation insurance,
10 for the purpose of reducing the premium, rate, or cost of the
11 insurance. Any person convicted of violating this subdivision shall
12 be punished by imprisonment ~~in the~~ a county jail for one year, or
13 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
14 *the Penal Code* for two, three, or five years, or by a fine not
15 exceeding fifty thousand dollars (\$50,000), or double the value of
16 the fraud, whichever is greater, or by both *that* imprisonment and
17 fine.

18 (b) Any person who violates subdivision (a) and who has a prior
19 felony conviction of the offense set forth in that subdivision shall
20 receive a two-year enhancement for each prior conviction in
21 addition to the sentence provided in subdivision (a). The existence
22 of any fact that would subject a person to a penalty enhancement
23 shall be alleged in the information or indictment and either admitted
24 by the defendant in open court, or found to be true by the jury
25 trying the issue of guilt or by the court where guilt is established
26 by plea of guilty or nolo contendere or by trial by the court sitting
27 without a jury.

28 *SEC. 218. Section 11880 of the Insurance Code is amended to*
29 *read:*

30 11880. (a) It is unlawful to make or cause to be made any
31 knowingly false or fraudulent statement, whether made orally or
32 in writing, of any fact material to the determination of the premium,
33 rate, or cost of any policy of workers' compensation insurance
34 issued or administered by the State Compensation Insurance Fund
35 for the purpose of reducing the premium, rate, or cost of the
36 insurance. Any person convicted of violating this subdivision shall
37 be punished by imprisonment ~~in the~~ a county jail for one year, or
38 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
39 *the Penal Code* for two, three, or five years, or by a fine not
40 exceeding fifty thousand dollars (\$50,000), or double the value of

the fraud, whichever is greater, or by both *that* imprisonment and fine.

(b) Any person who violates subdivision (a) and who has a prior felony conviction of the offense set forth in that subdivision shall receive a two-year enhancement for each prior conviction in addition to the sentence provided in subdivision (a). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

SEC. 219. Section 12660 of the Insurance Code is amended to read:

12660. Any person who in this state engages in the business of guaranteeing or insuring land values, or who solicits or negotiates in this state for the purpose of, or in any manner aids, any person within or without this state to engage in such business, is guilty of a public offense and punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or in the a county jail for not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such that fine and imprisonment.~~

SEC. 220. Section 12845 of the Insurance Code is amended to read:

12845. Any vehicle service contract obligor or administrator that provides vehicle service contract forms to sellers or purchasers, directly or indirectly, and fails to comply with Sections 12815, 12830 and 12835, is guilty of a public offense punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code,~~ or by a fine not exceeding five hundred thousand dollars (\$500,000), or both, and shall be enjoined from further violations by a court of competent jurisdiction on petition of the commissioner. This section shall not apply to a seller who is an obligor under vehicle service contracts it sells. The commissioner may issue a cease and desist order pursuant to Section 1065.2 to an obligor or administrator who violates Section 12830 or 12835. The commissioner may issue a cease and desist order pursuant to Section 12921.8 to an obligor or administrator in violation of Section 12815.

1 *SEC. 221. Section 227 of the Labor Code is amended to read:*

2 227. Whenever an employer has agreed with any employee to
3 make payments to a health or welfare fund, pension fund or
4 vacation plan, or other similar plan for the benefit of the employees,
5 or a negotiated industrial promotion fund, or has entered into a
6 collective bargaining agreement providing for these payments, it
7 shall be unlawful for that employer willfully or with intent to
8 defraud to fail to make the payments required by the terms of that
9 agreement. A violation of any provision of this section where the
10 amount the employer failed to pay into the fund or funds exceeds
11 five hundred dollars (\$500) shall be punishable by imprisonment
12 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
13 *the Penal Code*, or in a county jail for a period of not more than
14 one year, by a fine of not more than one thousand dollars (\$1,000),
15 or by both that imprisonment and fine. All other violations shall
16 be punishable as a misdemeanor.

17 *SEC. 222. Section 6425 of the Labor Code is amended to read:*

18 6425. (a) Any employer and any employee having direction,
19 management, control, or custody of any employment, place of
20 employment, or of any other employee, who willfully violates any
21 occupational safety or health standard, order, or special order, or
22 Section 25910 of the Health and Safety Code, and that violation
23 caused death to any employee, or caused permanent or prolonged
24 impairment of the body of any employee, is guilty of a public
25 offense punishable by imprisonment in a county jail for a term not
26 exceeding one year, or by a fine not exceeding one hundred
27 thousand dollars (\$100,000), or by both that imprisonment and
28 fine; or by imprisonment in the state prison for 16 months, or two
29 or three years, or by a fine of not more than two hundred fifty
30 thousand dollars (\$250,000), or by both that imprisonment and
31 fine; and in either case, if the defendant is a corporation or a limited
32 liability company, the fine may not exceed one million five hundred
33 thousand dollars (\$1,500,000).

34 (b) If the conviction is for a violation committed within seven
35 years after a conviction under subdivision (b), (c), or (d) of Section
36 6423 or subdivision (c) of Section 6430, punishment shall be by
37 imprisonment in state prison for a term of 16 months, two, or three
38 years, or by a fine not exceeding two hundred fifty thousand dollars
39 (\$250,000), or by both that fine and imprisonment, but if the
40 defendant is a corporation or limited liability company, the fine

1 may not be less than five hundred thousand dollars (\$500,000) or
2 more than two million five hundred thousand dollars (\$2,500,000).

3 (c) If the conviction is for a violation committed within seven
4 years after a first conviction of the ~~defendent~~ *defendant* for any
5 crime involving a violation of subdivision (a), punishment shall
6 be by imprisonment ~~in the state prison~~ *pursuant to subdivision (h)*
7 *of Section 1170 of the Penal Code* for two, three, or four years, or
8 by a fine not exceeding two hundred fifty thousand dollars
9 (\$250,000), or by both that fine and imprisonment, but if the
10 defendant is a corporation or a limited liability company, the fine
11 shall not be less than one million dollars (\$1,000,000) but may not
12 exceed three million five hundred thousand dollars (\$3,500,000).

13 (d) In determining the amount of fine to be imposed under this
14 section, the court shall consider all relevant circumstances,
15 including, but not limited to, the nature, circumstance, extent, and
16 gravity of the violation, any prior history of violations by the
17 defendant, the ability of the defendant to pay, and any other matters
18 the court determines the interests of justice require.

19 (e) As used in this section, “willfully” has the same definition
20 as it has in Section 7 of the Penal Code. This subdivision is
21 intended to be a codification of existing law.

22 (f) This section does not prohibit a prosecution under Section
23 192 of the Penal Code.

24 *SEC. 223. Section 7771 of the Labor Code is amended to read:*

25 7771. Every person having charge of any steam boiler, steam
26 engine, or other apparatus for generating or employing steam, used
27 in any manufactory, railroad, vessel, or other mechanical works,
28 who willfully, or from ignorance or neglect, creates, or allows to
29 be created, such an undue quantity of steam as to burst or break
30 the boiler, engine, or apparatus, or to cause any other accident
31 whereby the death of a human being is caused, is punishable by
32 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
33 *Section 1170 of the Penal Code* for two, three, or four years.

34 *SEC. 224. Section 145 of the Military and Veterans Code is*
35 *amended to read:*

36 145. A person who, after publication of the proclamation
37 authorized by Section 143, joins, participates or takes any part in
38 a rebellion, insurrection, tumult or riot, or who is party to any
39 conspiracy or combination to resist by force the execution of the
40 laws or who resists or aids in resisting the execution of process in

1 any county or city declared to be in a state of insurrection, or who
2 aids or attempts the rescue or escape of another from lawful custody
3 or confinement, or who resists or aids in resisting any force ordered
4 out by the Governor to quell or suppress an insurrection, is
5 punishable by a fine of not less than one thousand dollars (\$1,000),
6 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
7 *of Section 1170 of the Penal Code* for two, three, or four years, or
8 in a county jail for not more than one year, or by both that fine and
9 imprisonment.

10 *SEC. 225. Section 1318 of the Military and Veterans Code is*
11 *amended to read:*

12 1318. Every person who maliciously destroys, cuts, breaks,
13 mutilates, effaces, or otherwise injures, tears down, or removes
14 any veterans' memorial constructed or established pursuant to this
15 division, or constructed or established by any veterans' association,
16 as defined in subdivision (c) of Section 1260, is guilty of a crime
17 punishable by imprisonment ~~in the state prison pursuant to~~
18 *subdivision (h) of Section 1170 of the Penal Code* or by
19 imprisonment ~~in the~~ a county jail for less than one year.

20 *SEC. 226. Section 1672 of the Military and Veterans Code is*
21 *amended to read:*

22 1672. Any person who is guilty of violating Section 1670 or
23 1671 is punishable as follows:

24 (a) If the act or failure to act causes the death of any person, a
25 person violating this section is punishable by death or
26 imprisonment in the state prison for life without possibility of
27 parole. The penalty shall be determined pursuant to the provisions
28 of Sections 190.3 and 190.4 of the Penal Code. If the act or failure
29 to act causes great bodily injury to any person, a person violating
30 this section is punishable by life imprisonment without possibility
31 of parole.

32 (b) If the act or failure to act does not cause the death of, or
33 great bodily injury to, any person, the person violating this section
34 is punishable by imprisonment ~~in the state prison pursuant to~~
35 *subdivision (h) of Section 1170 of the Penal Code* for two, four,
36 or six years, by a fine of not more than ten thousand dollars
37 (\$10,000), or by both that imprisonment and fine. However, if a
38 person so acts or so fails to act with the intent to hinder, delay, or
39 interfere with the preparation of the United States or of any state
40 for defense or for war, or with the prosecution of war by the United

States, or with the rendering of assistance by the United States to any other nation in connection with that nation's defense, the person is punishable by a fine of not more than ten thousand dollars (\$10,000), imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code for three, five, or seven years, or by both that fine and imprisonment.

SEC. 227. Section 1673 of the Military and Veterans Code is amended to read:

1673. Any person who attempts to commit any of the crimes defined by this chapter is punishable as provided in Section 664 of the Penal Code, except that attempts to commit crimes defined by Sections 1670 and 1671 are punishable by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three or four years or by a fine of not more than ten thousand dollars (\$10,000), or both. In addition to the acts which constitute an attempt to commit a crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this chapter not followed by the commission of the crime, the collection or assemblage of any materials with the intent that they are to be used then or at a later time in the commission of such crime, or the entry, with or without permission, of a building, enclosure, or other premises of another with the intent to commit any such crime constitutes an attempt to commit such crime.

SEC. 228. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime ~~which~~ that is punishable with death, or by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail for more than one year. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail for more than one year, or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail for more than one year.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

1 (3) When the court grants probation to a defendant without
2 imposition of sentence and at the time of granting probation, or
3 on application of the defendant or probation officer thereafter, the
4 court declares the offense to be a misdemeanor.

5 (4) When the prosecuting attorney files in a court having
6 jurisdiction over misdemeanor offenses a complaint specifying
7 that the offense is a misdemeanor, unless the defendant at the time
8 of his or her arraignment or plea objects to the offense being made
9 a misdemeanor, in which event the complaint shall be amended
10 to charge the felony and the case shall proceed on the felony
11 complaint.

12 (5) When, at or before the preliminary examination or prior to
13 filing an order pursuant to Section 872, the magistrate determines
14 that the offense is a misdemeanor, in which event the case shall
15 proceed as if the defendant had been arraigned on a misdemeanor
16 complaint.

17 (c) When a defendant is committed to the Youth Authority for
18 a crime punishable, in the discretion of the court, *either* by
19 imprisonment in the state prison *or imprisonment in a county jail*
20 *for more than one year*, or by fine or imprisonment in the county
21 jail *not exceeding one year*, the offense shall, upon the discharge
22 of the defendant from the Youth Authority, thereafter be deemed
23 a misdemeanor for all purposes.

24 (d) A violation of any code section listed in Section 19.8 is an
25 infraction subject to the procedures described in Sections 19.6 and
26 19.7 when:

27 (1) The prosecutor files a complaint charging the offense as an
28 infraction unless the defendant, at the time he or she is arraigned,
29 after being informed of his or her rights, elects to have the case
30 proceed as a misdemeanor, or;

31 (2) The court, with the consent of the defendant, determines
32 that the offense is an infraction in which event the case shall
33 proceed as if the defendant had been arraigned on an infraction
34 complaint.

35 (e) Nothing in this section authorizes a judge to relieve a
36 defendant of the duty to register as a sex offender pursuant to
37 Section 290 if the defendant is charged with an offense for which
38 registration as a sex offender is required pursuant to Section 290,
39 and for which the trier of fact has found the defendant guilty.

40 SEC. 229. Section 17.5 is added to the Penal Code, to read:

1 17.5. (a) The Legislature finds and declares all of the
2 following:

3 (1) The Legislature reaffirms its commitment to reducing
4 recidivism among criminal offenders.

5 (2) Despite the dramatic increase in corrections spending over
6 the past two decades, national reincarceration rates for people
7 released from prison remain unchanged or have worsened. National
8 data show that about 40 percent of released individuals are
9 reincarcerated within three years. In California, the recidivism rate
10 for persons who have served time in prison is even greater than
11 the national average.

12 (3) Criminal justice policies that rely on building and operating
13 more prisons to address community safety concerns are not
14 sustainable, and will not result in improved public safety.

15 (4) California must reinvest its criminal justice resources to
16 support community-based corrections programs and evidence-based
17 practices that will achieve improved public safety returns on this
18 state's substantial investment in its criminal justice system.

19 (5) Realigning low-level felony offenders who do not have prior
20 convictions for serious, violent, or sex offenses to locally run
21 community-based corrections programs, which are strengthened
22 through community-based punishment, evidence-based practices,
23 improved supervision strategies, and enhanced secured capacity,
24 will improve public safety outcomes among adult felons and
25 facilitate their reintegration back into society.

26 (6) Community-based corrections programs require a partnership
27 between local public safety entities and the county to provide and
28 expand the use of community-based punishment for low-level
29 offender populations. Each county's Local Community Corrections
30 Partnership, as established in paragraph (2) of subdivision (b) of
31 Section 1230, should play a critical role in developing programs
32 and ensuring appropriate outcomes for low-level offenders.

33 (7) Fiscal concerns and programs should align to promote a
34 justice reinvestment strategy that fits each county. "Justice
35 reinvestment" is a data-driven approach to reduce corrections and
36 related criminal justice spending and reinvest savings in strategies
37 designed to increase public safety. The purpose of justice
38 reinvestment is to manage and allocate criminal justice populations
39 more cost-effectively, generating savings that can be reinvested

1 in evidence-based strategies that increase public safety while
2 holding offenders accountable.

3 (8) “Community-based punishment” means evidenced based
4 correctional sanctions and programming other than jail
5 incarceration alone or traditional routine probation supervision.
6 Intermediate sanctions may be provided by local public safety
7 entities directly or through community-based public or private
8 correctional service providers, and include, but are not limited to,
9 the following:

10 (A) Short-term flash incarceration in jail for a period of not
11 more than 7 days.

12 (B) Intensive community supervision.

13 (C) Home detention with electronic monitoring or GPS
14 monitoring.

15 (D) Mandatory community service.

16 (E) Restorative justice programs such as mandatory victim
17 restitution and victim-offender reconciliation.

18 (F) Work, training, or education in a furlough program pursuant
19 to Section 1208.

20 (G) Work, in lieu of confinement, in a work release program
21 pursuant to Section 4024.2.

22 (H) Day reporting.

23 (I) Mandatory residential or nonresidential substance abuse
24 treatment programs.

25 (J) Mandatory random drug testing.

26 (K) Mother-infant care programs.

27 (L) Community-based residential programs offering structure,
28 supervision, drug treatment, alcohol treatment, literacy
29 programming, employment counseling, psychological counseling,
30 mental health treatment, or any combination of these and other
31 interventions.

32 (9) “Evidence-based practices” refers to supervision policies,
33 procedures, programs, and practices demonstrated by scientific
34 research to reduce recidivism among individuals under probation,
35 parole, or post release supervision.

36 (b) The provisions of this act are not intended to alleviate state
37 prison overcrowding.

38 *SEC. 230. Section 18 of the Penal Code is amended to read:*

39 18. (a) Except in cases where a different punishment is
40 prescribed by any law of this state, every offense declared to be a

felony, ~~or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every as provided in subdivision (h) of Section 1170.~~

(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment ~~in any of the state prisons~~ or by a fine, but without an alternate sentence to the county jail ~~for a period not exceeding one year,~~ may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

SEC. 231. Section 19.2 of the Penal Code is amended to read:

19.2. In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of *a crime that specifies a felony punishment pursuant to subdivision (h) of Section 1170 or a conviction of more than one offense* when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as a part of the period of confinement.

SEC. 232. Section 33 of the Penal Code is amended to read:

33. Except in cases where a different punishment is prescribed, an accessory is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170,~~ or in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 233. Section 38 of the Penal Code is amended to read:

38. Misprision of treason is the knowledge and concealment of treason, without otherwise assenting to or participating in the crime. It is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

SEC. 234. Section 67.5 of the Penal Code is amended to read:

67.5. (a) Every person who gives or offers as a bribe to any ministerial officer, employee, or appointee of the State of

1 California, county or city therein, or political subdivision thereof,
2 any thing the theft of which would be petty theft is guilty of a
3 misdemeanor.

4 (b) If the theft of the thing given or offered would be grand theft
5 the offense is a felony *punishable by imprisonment pursuant to*
6 *subdivision (h) of Section 1170.*

7 *SEC. 235. Section 69 of the Penal Code is amended to read:*

8 69. Every person who attempts, by means of any threat or
9 violence, to deter or prevent an executive officer from performing
10 any duty imposed upon such officer by law, or who knowingly
11 resists, by the use of force or violence, such officer, in the
12 performance of his duty, is punishable by a fine not exceeding ten
13 thousand dollars (\$10,000), or by imprisonment ~~in the state prison~~
14 *pursuant to subdivision (h) of Section 1170*, or in a county jail not
15 exceeding one year, or by both such fine and imprisonment.

16 *SEC. 236. Section 71 of the Penal Code is amended to read:*

17 71. (a) Every person who, with intent to cause, attempts to
18 cause, or causes, any officer or employee of any public or private
19 educational institution or any public officer or employee to do, or
20 refrain from doing, any act in the performance of his duties, by
21 means of a threat, directly communicated to such person, to inflict
22 an unlawful injury upon any person or property, and it reasonably
23 appears to the recipient of the threat that such threat could be
24 carried out, is guilty of a public offense punishable as follows:

25 (1) Upon a first conviction, such person is punishable by a fine
26 not exceeding ten thousand dollars (\$10,000), or by imprisonment
27 ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or
28 in a county jail not exceeding one year, or by both ~~such~~ that fine
29 and imprisonment.

30 (2) ~~If such~~ the person has been previously convicted of a
31 violation of this section, such previous conviction shall be charged
32 in the accusatory pleading, and if ~~such~~ that previous conviction is
33 found to be true by the jury, upon a jury trial, or by the court, upon
34 a court trial, or is admitted by the defendant, he *or she* is punishable
35 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
36 *Section 1170.*

37 **As**

38 (b) As used in this section, “directly communicated” includes,
39 but is not limited to, a communication to the recipient of the threat
40 by telephone, telegraph, or letter.

1 *SEC. 237. Section 72 of the Penal Code is amended to read:*

2 72. Every person who, with intent to defraud, presents for
3 allowance or for payment to any state board or officer, or to any
4 county, city, or district board or officer, authorized to allow or pay
5 the same if genuine, any false or fraudulent claim, bill, account,
6 voucher, or writing, is punishable either by imprisonment in the
7 county jail for a period of not more than one year, by a fine of not
8 exceeding one thousand dollars (\$1,000), or by both ~~such that~~
9 imprisonment and fine, or by imprisonment ~~in the state prison~~
10 *pursuant to subdivision (h) of Section 1170*, by a fine of not
11 exceeding ten thousand dollars (\$10,000), or by both such
12 imprisonment and fine.

13 As used in this section “officer” includes a “carrier,” as defined
14 in subdivision (a) of Section 14124.70 of the Welfare and
15 Institutions Code, authorized to act as an agent for a state board
16 or officer or a county, city, or district board or officer, as the case
17 may be.

18 *SEC. 238. Section 72.5 of the Penal Code is amended to read:*

19 72.5. (a) Every person who, knowing a claim seeks public
20 funds for reimbursement of costs incurred in attending a political
21 function organized to support or oppose any political party or
22 political candidate, presents such a claim for allowance or for
23 payment to any state board or officer, or to any county, city, or
24 district board or officer authorized to allow or pay such claims, is
25 punishable either by imprisonment in the county jail for a period
26 of not more than one year, by a fine of not exceeding one thousand
27 dollars (\$1,000), or by both such imprisonment and fine, or by
28 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
29 *Section 1170*, by a fine of not exceeding ten thousand dollars
30 (\$10,000), or by both such imprisonment and fine.

31 (b) Every person who, knowing a claim seeks public funds for
32 reimbursement of costs incurred to gain admittance to a political
33 function expressly organized to support or oppose any ballot
34 measure, presents such a claim for allowance or for payment to
35 any state board or officer, or to any county, city, or district board
36 or officer authorized to allow or pay ~~such those~~ claims is
37 punishable either by imprisonment in the county jail for a period
38 of not more than one year, by a fine of not exceeding one thousand
39 dollars (\$1,000), or by both ~~such that~~ imprisonment and fine, or
40 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*

1 *Section 1170*, by a fine of not exceeding ten thousand dollars
2 (\$10,000), or by both ~~such~~ *that* imprisonment and fine.

3 *SEC. 239. Section 76 of the Penal Code is amended to read:*

4 76. (a) Every person who knowingly and willingly threatens
5 the life of, or threatens serious bodily harm to, any elected public
6 official, county public defender, county clerk, exempt appointee
7 of the Governor, judge, or Deputy Commissioner of the Board of
8 Prison Terms, or the staff, immediate family, or immediate family
9 of the staff of any elected public official, county public defender,
10 county clerk, exempt appointee of the Governor, judge, or Deputy
11 Commissioner of the Board of Prison Terms, with the specific
12 intent that the statement is to be taken as a threat, and the apparent
13 ability to carry out that threat by any means, is guilty of a public
14 offense, punishable as follows:

15 (1) Upon a first conviction, the offense is punishable by a fine
16 not exceeding five thousand dollars (\$5,000), or by imprisonment
17 ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or
18 in a county jail not exceeding one year, or by both that fine and
19 imprisonment.

20 (2) If the person has been convicted previously of violating this
21 section, the previous conviction shall be charged in the accusatory
22 pleading, and if the previous conviction is found to be true by the
23 jury upon a jury trial, or by the court upon a court trial, or is
24 admitted by the defendant, the offense is punishable by
25 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
26 *Section 1170*.

27 (b) Any law enforcement agency that has knowledge of a
28 violation of this section involving a constitutional officer of the
29 state, a Member of the Legislature, or a member of the judiciary
30 shall immediately report that information to the Department of the
31 California Highway Patrol.

32 (c) For purposes of this section, the following definitions shall
33 apply:

34 (1) “Apparent ability to carry out that threat” includes the ability
35 to fulfill the threat at some future date when the person making
36 the threat is an incarcerated prisoner with a stated release date.

37 (2) “Serious bodily harm” includes serious physical injury or
38 serious traumatic condition.

1 (3) “Immediate family” means a spouse, parent, or child, or
2 anyone who has regularly resided in the household for the past six
3 months.

4 (4) “Staff of a judge” means court officers and employees,
5 including commissioners, referees, and retired judges sitting on
6 assignment.

7 (5) “Threat” means a verbal or written threat or a threat implied
8 by a pattern of conduct or a combination of verbal or written
9 statements and conduct made with the intent and the apparent
10 ability to carry out the threat so as to cause the person who is the
11 target of the threat to reasonably fear for his or her safety or the
12 safety of his or her immediate family.

13 (d) As for threats against staff or immediate family of staff, the
14 threat must relate directly to the official duties of the staff of the
15 elected public official, county public defender, county clerk,
16 exempt appointee of the Governor, judge, or Deputy Commissioner
17 of the Board of Prison Terms in order to constitute a public offense
18 under this section.

19 (e) A threat must relate directly to the official duties of a Deputy
20 Commissioner of the Board of Prison Terms in order to constitute
21 a public offense under this section.

22 *SEC. 240. Section 95 of the Penal Code is amended to read:*

23 95. Every person who corruptly attempts to influence a juror,
24 or any person summoned or drawn as a juror, or chosen as an
25 arbitrator or umpire, or appointed a referee, in respect to his or her
26 verdict in, or decision of, any cause or proceeding, pending, or
27 about to be brought before him or her, is punishable by a fine not
28 exceeding ten thousand dollars (\$10,000), or by imprisonment ~~in~~
29 ~~the state prison~~ pursuant to subdivision (h) of Section 1170, if it
30 is by means of any of the following:

31 (a) Any oral or written communication with him or her except
32 in the regular course of proceedings.

33 (b) Any book, paper, or instrument exhibited, otherwise than
34 in the regular course of proceedings.

35 (c) Any threat, intimidation, persuasion, or entreaty.

36 (d) Any promise, or assurance of any pecuniary or other
37 advantage.

38 *SEC. 241. Section 95.1 of the Penal Code is amended to read:*

39 95.1. Every person who threatens a juror with respect to a
40 criminal proceeding in which a verdict has been rendered and who

1 has the intent and apparent ability to carry out the threat so as to
2 cause the target of the threat to reasonably fear for his or her safety
3 or the safety of his or her immediate family, is guilty of a public
4 offense and shall be punished by imprisonment in a county jail for
5 not more than one year, or by imprisonment ~~in the state prison~~
6 *pursuant to subdivision (h) of Section 1170*, or by a fine not
7 exceeding ten thousand dollars (\$10,000), or by both that
8 imprisonment and fine.

9 *SEC. 242. Section 96 of the Penal Code is amended to read:*

10 96. Every juror, or person drawn or summoned as a juror, or
11 chosen arbitrator or umpire, or appointed referee, who either:

12 One—Makes any promise or agreement to give a verdict or
13 decision for or against any party; or,

14 Two—Willfully and corruptly permits any communication to
15 be made to him, or receives any book, paper, instrument, or
16 information relating to any cause or matter pending before him,
17 except according to the regular course of proceedings,
18 is punishable by fine not exceeding ten thousand dollars (\$10,000),
19 or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h)*
20 *of Section 1170*.

21 *SEC. 243. Section 99 of the Penal Code is amended to read:*

22 99. The Superintendent of State Printing shall not, during his
23 continuance in office, have any interest, either directly or indirectly,
24 in any contract in any way connected with his office as
25 Superintendent of State Printing; nor shall he, during said period,
26 be interested, either directly or indirectly, in any state printing,
27 binding, engraving, lithographing, or other state work of any kind
28 connected with his said office; nor shall he, directly or indirectly,
29 be interested in any contract for furnishing paper, or other printing
30 stock or material, to or for use in his said office; and any violations
31 of these provisions shall subject him, on conviction before a court
32 of competent jurisdiction, to imprisonment ~~in the state prison~~
33 *pursuant to subdivision (h) of Section 1170* and to a fine of not
34 less than one thousand dollars (\$1,000) nor more than ten thousand
35 dollars (\$10,000), or by both ~~such~~ *that* fine and imprisonment.

36 *SEC. 244. Section 107 of the Penal Code is amended to read:*

37 107. Every prisoner charged with or convicted of a felony who
38 is an inmate of any public training school or reformatory or county
39 hospital who escapes or attempts to escape from such public
40 training school or reformatory or county hospital is guilty of a

1 felony and is punishable by imprisonment ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170*, or by a fine not
3 exceeding ten thousand dollars (\$10,000), or by both ~~such that~~
4 fine and imprisonment.

5 *SEC. 245. Section 109 of the Penal Code is amended to read:*

6 109. Any person who willfully assists any inmate of any public
7 training school or reformatory to escape, or in an attempt to escape
8 from ~~such that~~ public training school or reformatory is punishable
9 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
10 *Section 1170*, and fine not exceeding ten thousand dollars
11 (\$10,000).

12 *SEC. 246. Section 113 of the Penal Code is amended to read:*

13 113. Any person who manufactures, distributes or sells false
14 documents to conceal the true citizenship or resident alien status
15 of another person is guilty of a felony, and shall be punished by
16 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
17 *Section 1170* for five years or by a fine of seventy-five thousand
18 dollars (\$75,000).

19 *SEC. 247. Section 114 of the Penal Code is amended to read:*

20 114. Any person who uses false documents to conceal his or
21 her true citizenship or resident alien status is guilty of a felony,
22 and shall be punished by imprisonment ~~in the state prison~~ *pursuant*
23 *to subdivision (h) of Section 1170* for five years or by a fine of
24 twenty-five thousand dollars (\$25,000).

25 *SEC. 248. Section 115.1 of the Penal Code is amended to read:*

26 115.1. (a) The Legislature finds and declares that the voters
27 of California are entitled to accurate representations in materials
28 that are directed to them in efforts to influence how they vote.

29 (b) No person shall publish or cause to be published, with intent
30 to deceive, any campaign advertisement containing a signature
31 that the person knows to be unauthorized.

32 (c) For purposes of this section, “campaign advertisement”
33 means any communication directed to voters by means of a mass
34 mailing as defined in Section 82041.5 of the Government Code,
35 a paid television, radio, or newspaper advertisement, an outdoor
36 advertisement, or any other printed matter, if the expenditures for
37 that communication are required to be reported by Chapter 4
38 (commencing with Section 84100) of Title 9 of the Government
39 Code.

1 (d) For purposes of this section, an authorization to use a
2 signature shall be oral or written.

3 (e) Nothing in this section shall be construed to prohibit a person
4 from publishing or causing to be published a reproduction of all
5 or part of a document containing an actual or authorized signature,
6 provided that the signature so reproduced shall not, with the intent
7 to deceive, be incorporated into another document in a manner
8 that falsely suggests that the person whose signature is reproduced
9 has signed the other document.

10 (f) Any knowing or willful violation of this section is a public
11 offense punishable by imprisonment ~~in the state prison or in a~~
12 county jail *not exceeding 6 months, or pursuant to subdivision (h)*
13 *of Section 1170*, or by a fine not to exceed fifty thousand dollars
14 (\$50,000), or by both that fine and imprisonment.

15 (g) As used in this section, “signature” means either of the
16 following:

17 (1) A handwritten or mechanical signature, or a copy thereof.

18 (2) Any representation of a person’s name, including, but not
19 limited to, a printed or typewritten representation, that serves the
20 same purpose as a handwritten or mechanical signature.

21 *SEC. 249. Section 126 of the Penal Code is amended to read:*

22 126. Perjury is punishable by imprisonment ~~in the state prison~~
23 *pursuant to subdivision (h) of Section 1170* for two, three or four
24 years.

25 *SEC. 250. Section 136.7 of the Penal Code is amended to read:*

26 136.7. Every person imprisoned in a county jail or the state
27 prison who has been convicted of a sexual offense, including, but
28 not limited to, a violation of Section 243.4, 261, 261.5, 262, 264.1,
29 266, 266a, 266b, 266c, 266f, 285, 286, 288, 288a, or 289, who
30 knowingly reveals the name and address of any witness or victim
31 to that offense to any other prisoner with the intent that the other
32 prisoner will intimidate or harass the witness or victim through
33 the initiation of unauthorized correspondence with the witness or
34 victim, is guilty of a public offense, punishable by imprisonment
35 in the county jail not to exceed one year, or by imprisonment ~~in~~
36 ~~the state prison pursuant to subdivision (h) of Section 1170.~~

37 Nothing in this section shall prevent the interviewing of
38 witnesses.

39 *SEC. 251. Section 137 of the Penal Code is amended to read:*

1 137. (a) Every person who gives or offers, or promises to give,
2 to any witness, person about to be called as a witness, or person
3 about to give material information pertaining to a crime to a law
4 enforcement official, any bribe, upon any understanding or
5 agreement that the testimony of such witness or information given
6 by such person shall be thereby influenced is guilty of a felony.

7 (b) Every person who attempts by force or threat of force or by
8 the use of fraud to induce any person to give false testimony or
9 withhold true testimony or to give false material information
10 pertaining to a crime to, or withhold true material information
11 pertaining to a crime from, a law enforcement official is guilty of
12 a felony, punishable by imprisonment ~~in the state prison pursuant~~
13 *to subdivision (h) of Section 1170* for two, three, or four years.

14 As used in this subdivision, “threat of force” means a credible
15 threat of unlawful injury to any person or damage to the property
16 of another which is communicated to a person for the purpose of
17 inducing him to give false testimony or withhold true testimony
18 or to give false material information pertaining to a crime to, or
19 to withhold true material information pertaining to a crime from,
20 a law enforcement official.

21 (c) Every person who knowingly induces another person to give
22 false testimony or withhold true testimony not privileged by law
23 or to give false material information pertaining to a crime to, or
24 to withhold true material information pertaining to a crime from,
25 a law enforcement official is guilty of a misdemeanor.

26 (d) At the arraignment, on a showing of cause to believe this
27 section may be violated, the court, on motion of a party, shall
28 admonish the person who there is cause to believe may violate this
29 section and shall announce the penalties and other provisions of
30 this section.

31 (e) As used in this section “law enforcement official” includes
32 any district attorney, deputy district attorney, city attorney, deputy
33 city attorney, the Attorney General or any deputy attorney general,
34 or any peace officer included in Chapter 4.5 (commencing with
35 Section 830) of Title 3 of Part 2.

36 (f) The provisions of subdivision (c) shall not apply to an
37 attorney advising a client or to a person advising a member of his
38 or her family.

1 *SEC. 252. Section 139 of the Penal Code, as amended by*
2 *Section 1 of Chapter 80 of the Statutes of 1990, is amended to*
3 *read:*

4 139. (a) Except as provided in Sections 71 and 136.1, any
5 person who has been convicted of any felony offense specified in
6 Section 12021.1 who willfully and maliciously communicates to
7 a witness to, or a victim of, the crime for which the person was
8 convicted, a credible threat to use force or violence upon that
9 person or that person's immediate family, shall be punished by
10 imprisonment in the county jail not exceeding one year or by
11 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
12 ~~Section 1170~~ for two, three, or four years.

13 (b) Any person who is convicted of violating subdivision (a)
14 who subsequently is convicted of making a credible threat, as
15 defined in subdivision (c), which constitutes a threat against the
16 life of, or a threat to cause great bodily injury to, a person described
17 in subdivision (a), shall be sentenced to consecutive terms of
18 imprisonment as prescribed in Section 1170.13.

19 (c) As used in this section, "a credible threat" is a threat made
20 with the intent and the apparent ability to carry out the threat so
21 as to cause the target of the threat to reasonably fear for his or her
22 safety or the safety of his or her immediate family.

23 (d) The present incarceration of the person making the threat
24 shall not be a bar to prosecution under this section.

25 (e) As used in this section, "malice," "witness," and "victim"
26 have the meanings given in Section 136.

27 *SEC. 253. Section 139 of the Penal Code, as amended by*
28 *Section 43 of Chapter 178 of the Statutes of 2010, is amended to*
29 *read:*

30 139. (a) Except as provided in Sections 71 and 136.1, any
31 person who has been convicted of any felony offense specified in
32 Chapter 3 (commencing with Section 29900) of Division 9 of Title
33 4 of Part 6 who willfully and maliciously communicates to a
34 witness to, or a victim of, the crime for which the person was
35 convicted, a credible threat to use force or violence upon that
36 person or that person's immediate family, shall be punished by
37 imprisonment in the county jail not exceeding one year or by
38 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
39 ~~Section 1170~~ for two, three, or four years.

1 (b) Any person who is convicted of violating subdivision (a)
2 who subsequently is convicted of making a credible threat, as
3 defined in subdivision (c), which constitutes a threat against the
4 life of, or a threat to cause great bodily injury to, a person described
5 in subdivision (a), shall be sentenced to consecutive terms of
6 imprisonment as prescribed in Section 1170.13.

7 (c) As used in this section, “a credible threat” is a threat made
8 with the intent and the apparent ability to carry out the threat so
9 as to cause the target of the threat to reasonably fear for his or her
10 safety or the safety of his or her immediate family.

11 (d) The present incarceration of the person making the threat
12 shall not be a bar to prosecution under this section.

13 (e) As used in this section, “malice,” “witness,” and “victim”
14 have the meanings given in Section 136.

15 *SEC. 254. Section 140 of the Penal Code is amended to read:*

16 140. (a) Except as provided in Section 139, every person who
17 willfully uses force or threatens to use force or violence upon the
18 person of a witness to, or a victim of, a crime or any other person,
19 or to take, damage, or destroy any property of any witness, victim,
20 or any other person, because the witness, victim, or other person
21 has provided any assistance or information to a law enforcement
22 officer, or to a public prosecutor in a criminal proceeding or
23 juvenile court proceeding, shall be punished by imprisonment in
24 the county jail not exceeding one year, or by imprisonment ~~in the~~
25 ~~state prison~~ pursuant to subdivision (h) of Section 1170 for two,
26 three, or four years.

27 (b) A person who is punished under another provision of law
28 for an act described in subdivision (a) shall not receive an
29 additional term of imprisonment under this section.

30 *SEC. 255. Section 142 of the Penal Code is amended to read:*

31 142. (a) Any peace officer who has the authority to receive or
32 arrest a person charged with a criminal offense and willfully refuses
33 to receive or arrest that person shall be punished by a fine not
34 exceeding ten thousand dollars (\$10,000), or by imprisonment in
35 ~~the state prison, or in~~ a county jail not exceeding one year, *or*
36 *pursuant to subdivision (h) of Section 1170*, or by both that fine
37 and imprisonment.

38 (b) Notwithstanding subdivision (a), the sheriff may determine
39 whether any jail, institution, or facility under his or her direction
40 shall be designated as a reception, holding, or confinement facility,

1 or shall be used for several of those purposes, and may designate
2 the class of prisoners for which any facility shall be used.

3 (c) This section shall not apply to arrests made pursuant to
4 Section 837.

5 *SEC. 256. Section 146a of the Penal Code is amended to read:*

6 146a. (a) Any person who falsely represents himself or herself
7 to be a deputy or clerk in any state department and who, in that
8 assumed character, does any of the following is guilty of a
9 misdemeanor punishable by imprisonment in a county jail not
10 exceeding six months, by a fine not exceeding two thousand five
11 hundred dollars (\$2,500), or both the fine and imprisonment:

12 (1) Arrests, detains, or threatens to arrest or detain any person.

13 (2) Otherwise intimidates any person.

14 (3) Searches any person, building, or other property of any
15 person.

16 (4) Obtains money, property, or other thing of value.

17 (b) Any person who falsely represents himself or herself to be
18 a public officer, investigator, or inspector in any state department
19 and who, in that assumed character, does any of the following shall
20 be punished by imprisonment in a county jail not exceeding one
21 year, by a fine not exceeding two thousand five hundred dollars
22 (\$2,500), or by both that fine and imprisonment, or by
23 imprisonment in the state prison pursuant to subdivision (h) of
24 Section 1170:

25 (1) Arrests, detains, or threatens to arrest or detain any person.

26 (2) Otherwise intimidates any person.

27 (3) Searches any person, building, or other property of any
28 person.

29 (4) Obtains money, property, or other thing of value.

30 *SEC. 257. Section 146e of the Penal Code is amended to read:*

31 146e. (a) Every person who maliciously, and with the intent
32 to obstruct justice or the due administration of the laws, or with
33 the intent or threat to inflict imminent physical harm in retaliation
34 for the due administration of the laws, publishes, disseminates, or
35 otherwise discloses the residence address or telephone number of
36 any peace officer, nonsworn police dispatcher, employee of a city
37 police department or county sheriff's office, or public safety
38 official, or that of the spouse or children of these persons who
39 reside with them, while designating the peace officer, nonsworn
40 police dispatcher, employee of a city police department or county

1 sheriff's office, or public safety official, or relative of these persons
2 as such, without the authorization of the employing agency, is
3 guilty of a misdemeanor.

4 (b) A violation of subdivision (a) with regard to any peace
5 officer, employee of a city police department or county sheriff's
6 office, or public safety official, or the spouse or children of these
7 persons, that results in bodily injury to the peace officer, employee
8 of the city police department or county sheriff's office, or public
9 safety official, or the spouse or children of these persons, is a felony
10 *punishable by imprisonment pursuant to subdivision (h) of Section*
11 *1170.*

12 (c) For purposes of this section, "public safety official" is
13 defined in Section 6254.24 of the Government Code.

14 *SEC. 258. Section 148 of the Penal Code is amended to read:*

15 148. (a) (1) Every person who willfully resists, delays, or
16 obstructs any public officer, peace officer, or an emergency medical
17 technician, as defined in Division 2.5 (commencing with Section
18 1797) of the Health and Safety Code, in the discharge or attempt
19 to discharge any duty of his or her office or employment, when
20 no other punishment is prescribed, shall be punished by a fine not
21 exceeding one thousand dollars (\$1,000), or by imprisonment in
22 a county jail not to exceed one year, or by both that fine and
23 imprisonment.

24 (2) Except as provided by subdivision (d) of Section 653t, every
25 person who knowingly and maliciously interrupts, disrupts,
26 impedes, or otherwise interferes with the transmission of a
27 communication over a public safety radio frequency shall be
28 punished by a fine not exceeding one thousand dollars (\$1,000),
29 imprisonment in a county jail not exceeding one year, or by both
30 that fine and imprisonment.

31 (b) Every person who, during the commission of any offense
32 described in subdivision (a), removes or takes any weapon, other
33 than a firearm, from the person of, or immediate presence of, a
34 public officer or peace officer shall be punished by imprisonment
35 in a county jail not to exceed one year or ~~in the state prison~~
36 *pursuant to subdivision (h) of Section 1170.*

37 (c) Every person who, during the commission of any offense
38 described in subdivision (a), removes or takes a firearm from the
39 person of, or immediate presence of, a public officer or peace

1 officer shall be punished by imprisonment ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170.*

3 (d) Except as provided in subdivision (c) and notwithstanding
4 subdivision (a) of Section 489, every person who removes or takes
5 without intent to permanently deprive, or who attempts to remove
6 or take a firearm from the person of, or immediate presence of, a
7 public officer or peace officer, while the officer is engaged in the
8 performance of his or her lawful duties, shall be punished by
9 imprisonment in a county jail not to exceed one year or ~~in the state~~
10 ~~prison~~ *pursuant to subdivision (h) of Section 1170.*

11 In order to prove a violation of this subdivision, the prosecution
12 shall establish that the defendant had the specific intent to remove
13 or take the firearm by demonstrating that any of the following
14 direct, but ineffectual, acts occurred:

15 (1) The officer's holster strap was unfastened by the defendant.

16 (2) The firearm was partially removed from the officer's holster
17 by the defendant.

18 (3) The firearm safety was released by the defendant.

19 (4) An independent witness corroborates that the defendant
20 stated that he or she intended to remove the firearm and the
21 defendant actually touched the firearm.

22 (5) An independent witness corroborates that the defendant
23 actually had his or her hand on the firearm and tried to take the
24 firearm away from the officer who was holding it.

25 (6) The defendant's fingerprint was found on the firearm or
26 holster.

27 (7) Physical evidence authenticated by a scientifically verifiable
28 procedure established that the defendant touched the firearm.

29 (8) In the course of any struggle, the officer's firearm fell and
30 the defendant attempted to pick it up.

31 (e) A person shall not be convicted of a violation of subdivision
32 (a) in addition to a conviction of a violation of subdivision (b), (c),
33 or (d) when the resistance, delay, or obstruction, and the removal
34 or taking of the weapon or firearm or attempt thereof, was
35 committed against the same public officer, peace officer, or
36 emergency medical technician. A person may be convicted of
37 multiple violations of this section if more than one public officer,
38 peace officer, or emergency medical technician are victims.

1 (f) This section shall not apply if the public officer, peace
2 officer, or emergency medical technician is disarmed while engaged
3 in a criminal act.

4 *SEC. 259. Section 148.1 of the Penal Code is amended to read:*

5 148.1. (a) Any person who reports to any peace officer listed
6 in Section 830.1 or 830.2, or subdivision (a) of Section 830.33,
7 employee of a fire department or fire service, district attorney,
8 newspaper, radio station, television station, deputy district attorney,
9 employees of the Department of Justice, employees of an airline,
10 employees of an airport, employees of a railroad or busline, an
11 employee of a telephone company, occupants of a building or a
12 news reporter in the employ of a newspaper or radio or television
13 station, that a bomb or other explosive has been or will be placed
14 or secreted in any public or private place, knowing that the report
15 is false, is guilty of a crime punishable by imprisonment in ~~the~~
16 ~~state prison, or imprisonment in the a county jail not to exceed~~
17 ~~one year, or pursuant to subdivision (h) of Section 1170.~~

18 (b) Any person who reports to any other peace officer defined
19 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
20 2 that a bomb or other explosive has been or will be placed or
21 secreted in any public or private place, knowing that the report is
22 false, is guilty of a crime punishable by imprisonment in ~~the state~~
23 ~~prison or in the a county jail not to exceed one year or pursuant~~
24 ~~to subdivision (h) of Section 1170~~ if (1) the false information is
25 given while the peace officer is engaged in the performance of his
26 or her duties as a peace officer and (2) the person providing the
27 false information knows or should have known that the person
28 receiving the information is a peace officer.

29 (c) Any person who maliciously informs any other person that
30 a bomb or other explosive has been or will be placed or secreted
31 in any public or private place, knowing that the information is
32 false, is guilty of a crime punishable by imprisonment in ~~the state~~
33 ~~prison, or imprisonment in the a county jail not to exceed one year,~~
34 ~~or pursuant to subdivision (h) of Section 1170.~~

35 (d) Any person who maliciously gives, mails, sends, or causes
36 to be sent any false or facsimile bomb to another person, or places,
37 causes to be placed, or maliciously possesses any false or facsimile
38 bomb, with the intent to cause another to fear for his or her personal
39 safety or the safety of others, is guilty of a crime punishable by
40 imprisonment in ~~the state prison, or imprisonment in the a county~~

1 jail not to exceed one year, *or pursuant to subdivision (h) of Section*
2 *1170.*

3 *SEC. 260. Section 148.3 of the Penal Code is amended to read:*

4 148.3. (a) Any individual who reports, or causes any report
5 to be made, to any city, county, city and county, or state
6 department, district, agency, division, commission, or board, that
7 an “emergency” exists, knowing that the report is false, is guilty
8 of a misdemeanor and upon conviction thereof shall be punishable
9 by imprisonment in ~~the a~~ county jail for a period not exceeding
10 one year, or by a fine not exceeding one thousand dollars (\$1,000),
11 or by both that imprisonment and fine.

12 (b) Any individual who reports, or causes any report to be made,
13 to any city, county, city and county, or state department, district,
14 agency, division, commission, or board, that an “emergency” exists,
15 and who knows that the report is false, and who knows or should
16 know that the response to the report is likely to cause death or
17 great bodily injury, and great bodily injury or death is sustained
18 by any person as a result of the false report, is guilty of a felony
19 and upon conviction thereof shall be punishable by imprisonment
20 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or
21 by a fine of not more than ten thousand dollars (\$10,000), or by
22 both that imprisonment and fine.

23 (c) “Emergency” as used in this section means any condition
24 that results in, or could result in, the response of a public official
25 in an authorized emergency vehicle, aircraft, or vessel, any
26 condition that jeopardizes or could jeopardize public safety and
27 results in, or could result in, the evacuation of any area, building,
28 structure, vehicle, or of any other place that any individual may
29 enter, or any situation that results in or could result in activation
30 of the Emergency Alert System pursuant to Section 8594 of the
31 Government Code. An activation or possible activation of the
32 Emergency Alert System pursuant to Section 8594 of the
33 Government Code shall not constitute an “emergency” for purposes
34 of this section if it occurs as the result of a report made or caused
35 to be made by a parent, guardian, or lawful custodian of a child
36 that is based on a good faith belief that the child is missing.

37 *SEC. 261. Section 148.4 of the Penal Code is amended to read:*

38 148.4. (a) Any person who does any of the following is guilty
39 of a misdemeanor and upon conviction is punishable by
40 imprisonment in a county jail, not exceeding one year, or by a fine,

1 not exceeding one thousand dollars (\$1,000), or by both that fine
2 and imprisonment:

3 (1) Willfully and maliciously tampers with, molests, injures, or
4 breaks any fire protection equipment, fire protection installation,
5 fire alarm apparatus, wire, or signal.

6 (2) Willfully and maliciously sends, gives, transmits, or sounds
7 any false alarm of fire, by means of any fire alarm system or signal
8 or by any other means or methods.

9 (b) Any person who willfully and maliciously sends, gives,
10 transmits, or sounds any false alarm of fire, by means of any fire
11 alarm system or signal, or by any other means or methods, is guilty
12 of a felony and upon conviction is punishable by imprisonment ~~in~~
13 ~~the state prison pursuant to subdivision (h) of Section 1170~~ or by
14 a fine of not less than five hundred dollars (\$500) nor more than
15 ten thousand dollars (\$10,000), or by both that fine and
16 imprisonment, if any person sustains as a result thereof, any of the
17 following:

18 (1) Great bodily injury.

19 (2) Death.

20 *SEC. 262. Section 148.10 of the Penal Code is amended to*
21 *read:*

22 148.10. (a) Every person who willfully resists a peace officer
23 in the discharge or attempt to discharge any duty of his or her
24 office or employment and whose willful resistance proximately
25 causes death or serious bodily injury to a peace officer shall be
26 punished by imprisonment ~~in the state prison pursuant to~~
27 ~~subdivision (h) of Section 1170~~ for two, three, or four years, or by
28 a fine of not less than one thousand dollars (\$1,000) or more than
29 ten thousand dollars (\$10,000), or by both that fine and
30 imprisonment, or by imprisonment in a county jail for not more
31 than one year, or by a fine of not more than one thousand dollars
32 (\$1,000), or by both that fine and imprisonment.

33 (b) For purposes of subdivision (a), the following facts shall be
34 found by the trier of fact:

35 (1) That the peace officer's action was reasonable based on the
36 facts or circumstances confronting the officer at the time.

37 (2) That the detention and arrest was lawful and there existed
38 probable cause or reasonable cause to detain.

(3) That the person who willfully resisted any peace officer knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties.

(c) This section does not apply to conduct that occurs during labor picketing, demonstrations, or disturbing the peace.

(d) For purposes of this section, “serious bodily injury” is defined in paragraph (4) of subdivision (f) of Section 243.

SEC. 263. Section 149 of the Penal Code is amended to read:

149. Every public officer who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170, or by both ~~such~~ that fine and imprisonment.

SEC. 264. Section 153 of the Penal Code is amended to read:

153. Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal ~~such~~ that crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

1. By imprisonment in ~~the state prison, or in~~ a county jail not exceeding one year, or pursuant to subdivision (h) of Section 1170, where the crime was punishable by death or imprisonment in the state prison for life;

2. By imprisonment in ~~the state prison, or in the~~ a county jail not exceeding six months, or pursuant to subdivision (h) of Section 1170, where the crime was punishable by imprisonment in the state prison for any other term than for life;

3. By imprisonment in ~~the~~ a county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), where the crime was a misdemeanor.

SEC. 265. Section 156 of the Penal Code is amended to read:

156. Every person who fraudulently produces an infant, falsely pretending it to have been born of any parent whose child would be entitled to inherit any real estate or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate, or the distribution of any such personal estate from any

1 person lawfully entitled thereto, is punishable by imprisonment in
2 ~~the state prison pursuant to subdivision (h) of Section 1170~~ for
3 two, three or four years.

4 *SEC. 266. Section 157 of the Penal Code is amended to read:*

5 157. Every person to whom an infant has been confided for
6 nursing, education, or any other purpose, who, with intent to
7 deceive any parent or guardian of ~~such~~ that child, substitutes or
8 produces to ~~such~~ that parent or guardian another child in the place
9 of the one so confided, is punishable by imprisonment in ~~the state~~
10 ~~prison pursuant to subdivision (h) of Section 1170~~ for two, three
11 or four years.

12 *SEC. 267. Section 168 of the Penal Code is amended to read:*

13 168. (a) Every district attorney, clerk, judge, or peace officer
14 who, except by issuing or in executing a search warrant or warrant
15 of arrest for a felony, willfully discloses the fact of the warrant
16 prior to execution for the purpose of preventing the search or
17 seizure of property or the arrest of any person shall be punished
18 by imprisonment in ~~the state prison or in~~ a county jail for not
19 exceeding one year *or pursuant to subdivision (h) of Section 1170*.

20 (b) This section shall not prohibit the following:

21 (1) A disclosure made by a district attorney or the Attorney
22 General for the sole purpose of securing voluntary compliance
23 with the warrant.

24 (2) Upon the return of an indictment and the issuance of an
25 arrest warrant, a disclosure of the existence of the indictment and
26 arrest warrant by a district attorney or the Attorney General to
27 assist in the apprehension of a defendant.

28 (3) The disclosure of an arrest warrant pursuant to paragraph
29 (1) of subdivision (a) of Section 14201.6.

30 *SEC. 268. Section 171c of the Penal Code is amended to read:*

31 171c. (a) (1) Any person who brings a loaded firearm into,
32 or possesses a loaded firearm within, the State Capitol, any
33 legislative office, any office of the Governor or other constitutional
34 officer, or any hearing room in which any committee of the Senate
35 or Assembly is conducting a hearing, or upon the grounds of the
36 State Capitol, which is bounded by 10th, L, 15th, and N Streets in
37 the City of Sacramento, shall be punished by imprisonment in a
38 county jail for a period of not more than one year, a fine of not
39 more than one thousand dollars (\$1,000), or both such

1 imprisonment and fine, or by imprisonment ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170.*

3 (2) Any person who brings or possesses, within the State Capitol,
4 any legislative office, any hearing room in which any committee
5 of the Senate or Assembly is conducting a hearing, the Legislative
6 Office Building at 1020 N Street in the City of Sacramento, or
7 upon the grounds of the State Capitol, which is bounded by 10th,
8 L, 15th, and N Streets in the City of Sacramento, any of the
9 following, is guilty of a misdemeanor punishable by imprisonment
10 in a county jail for a period not to exceed one year, or by a fine
11 not exceeding one thousand dollars (\$1,000), or by both that fine
12 and imprisonment, if the area is posted with a statement providing
13 reasonable notice that prosecution may result from possession of
14 any of these items:

15 (A) Any firearm.

16 (B) Any deadly weapon described in Section 653k or 12020.

17 (C) Any knife with a blade length in excess of four inches, the
18 blade of which is fixed or is capable of being fixed in an unguarded
19 position by the use of one or two hands.

20 (D) Any unauthorized tear gas weapon.

21 (E) Any stun gun, as defined in Section 244.5.

22 (F) Any instrument that expels a metallic projectile, such as a
23 BB or pellet, through the force of air pressure, CO₂ pressure, or
24 spring action, or any spot marker gun or paint gun.

25 (G) Any ammunition as defined in Section 12316.

26 (H) Any explosive as defined in Section 12000 of the Health
27 and Safety Code.

28 (b) Subdivision (a) shall not apply to, or affect, any of the
29 following:

30 (1) A duly appointed peace officer as defined in Chapter 4.5
31 (commencing with Section 830) of Title 3 of Part 2, a retired peace
32 officer with authorization to carry concealed weapons as described
33 in subdivision (a) of Section 12027, a full-time paid peace officer
34 of another state or the federal government who is carrying out
35 official duties while in California, or any person summoned by
36 any of these officers to assist in making arrests or preserving the
37 peace while he or she is actually engaged in assisting the officer.

38 (2) A person holding a valid license to carry the firearm pursuant
39 to Article 3 (commencing with Section 12050) of Chapter 1 of
40 Title 2 of Part 4, and who has permission granted by the Chief

1 Sergeants at Arms of the State Assembly and the State Senate to
2 possess a concealed weapon upon the premises described in
3 subdivision (a).

4 (3) A person who has permission granted by the Chief Sergeants
5 at Arms of the State Assembly and the State Senate to possess a
6 weapon upon the premises described in subdivision (a).

7 (c) (1) Nothing in this section shall preclude prosecution under
8 Sections 12021 and 12021.1, Section 8100 or 8103 of the Welfare
9 and Institutions Code, or any other law with a penalty greater than
10 is set forth in this section.

11 (2) The provisions of this section are cumulative, and shall not
12 be construed as restricting the application of any other law.
13 However, an act or omission punishable in different ways by
14 different provisions of law shall not be punished under more than
15 one provision.

16 *SEC. 269. Section 171d of the Penal Code, as amended by*
17 *Section 497 of Chapter 538 of the Statutes of 2006, is amended to*
18 *read:*

19 171d. Any person, except a duly appointed peace officer as
20 defined in Chapter 4.5 (commencing with Section 830) of Title 3
21 of Part 2, a full-time paid peace officer of another state or the
22 federal government who is carrying out official duties while in
23 California, any person summoned by that officer to assist in making
24 arrests or preserving the peace while he or she is actually engaged
25 in assisting the officer, a member of the military forces of this state
26 or of the United States engaged in the performance of his or her
27 duties, a person holding a valid license to carry the firearm pursuant
28 to Article 3 (commencing with Section 12050) of Chapter 1 of
29 Title 2 of Part 4, the Governor or a member of his or her immediate
30 family or a person acting with his or her permission with respect
31 to the Governor's Mansion or any other residence of the Governor,
32 any other constitutional officer or a member of his or her immediate
33 family or a person acting with his or her permission with respect
34 to the officer's residence, or a Member of the Legislature or a
35 member of his or her immediate family or a person acting with his
36 or her permission with respect to the Member's residence, shall
37 be punished by imprisonment in a county jail for not more than
38 one year, by fine of not more than one thousand dollars (\$1,000),
39 or by both the fine and imprisonment, or by imprisonment in the

1 ~~state prison~~ pursuant to subdivision (h) of Section 1170, if he or
2 she does any of the following:

3 (a) Brings a loaded firearm into, or possesses a loaded firearm
4 within, the Governor's Mansion, or any other residence of the
5 Governor, the residence of any other constitutional officer, or the
6 residence of any Member of the Legislature.

7 (b) Brings a loaded firearm upon, or possesses a loaded firearm
8 upon, the grounds of the Governor's Mansion or any other
9 residence of the Governor, the residence of any other constitutional
10 officer, or the residence of any Member of the Legislature.

11 SEC. 270. Section 171d of the Penal Code, as amended by
12 Section 47 of Chapter 178 of the Statutes of 2010, is amended to
13 read:

14 171d. Any person, except a duly appointed peace officer as
15 defined in Chapter 4.5 (commencing with Section 830) of Title 3
16 of Part 2, a full-time paid peace officer of another state or the
17 federal government who is carrying out official duties while in
18 California, any person summoned by that officer to assist in making
19 arrests or preserving the peace while he or she is actually engaged
20 in assisting the officer, a member of the military forces of this state
21 or of the United States engaged in the performance of his or her
22 duties, a person holding a valid license to carry the firearm pursuant
23 to Chapter 4 (commencing with Section 26150) of Division 5 of
24 Title 4 of Part 6, the Governor or a member of his or her immediate
25 family or a person acting with his or her permission with respect
26 to the Governor's Mansion or any other residence of the Governor,
27 any other constitutional officer or a member of his or her immediate
28 family or a person acting with his or her permission with respect
29 to the officer's residence, or a Member of the Legislature or a
30 member of his or her immediate family or a person acting with his
31 or her permission with respect to the Member's residence, shall
32 be punished by imprisonment in a county jail for not more than
33 one year, by fine of not more than one thousand dollars (\$1,000),
34 or by both the fine and imprisonment, or by imprisonment ~~in the~~
35 ~~state prison~~ pursuant to subdivision (h) of Section 1170, if he or
36 she does any of the following:

37 (a) Brings a loaded firearm into, or possesses a loaded firearm
38 within, the Governor's Mansion, or any other residence of the
39 Governor, the residence of any other constitutional officer, or the
40 residence of any Member of the Legislature.

1 (b) Brings a loaded firearm upon, or possesses a loaded firearm
2 upon, the grounds of the Governor's Mansion or any other
3 residence of the Governor, the residence of any other constitutional
4 officer, or the residence of any Member of the Legislature.

5 *SEC. 271. Section 181 of the Penal Code is amended to read:*

6 181. Every person who holds, or attempts to hold, any person
7 in involuntary servitude, or assumes, or attempts to assume, rights
8 of ownership over any person, or who sells, or attempts to sell,
9 any person to another, or receives money or anything of value, in
10 consideration of placing any person in the custody, or under the
11 power or control of another, or who buys, or attempts to buy, any
12 person, or pays money, or delivers anything of value, to another,
13 in consideration of having any person placed in his *or her* custody,
14 or under his *or her* power or control, or who knowingly aids or
15 assists in any manner any one thus offending, is punishable by
16 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
17 *Section 1170* for two, three or four years.

18 *SEC. 272. Section 182 of the Penal Code is amended to read:*

19 182. (a) If two or more persons conspire:

20 (1) To commit any crime.

21 (2) Falsely and maliciously to indict another for any crime, or
22 to procure another to be charged or arrested for any crime.

23 (3) Falsely to move or maintain any suit, action, or proceeding.

24 (4) To cheat and defraud any person of any property, by any
25 means which are in themselves criminal, or to obtain money or
26 property by false pretenses or by false promises with fraudulent
27 intent not to perform those promises.

28 (5) To commit any act injurious to the public health, to public
29 morals, or to pervert or obstruct justice, or the due administration
30 of the laws.

31 (6) To commit any crime against the person of the President or
32 Vice President of the United States, the Governor of any state or
33 territory, any United States justice or judge, or the secretary of any
34 of the executive departments of the United States.

35 They are punishable as follows:

36 When they conspire to commit any crime against the person of
37 any official specified in paragraph (6), they are guilty of a felony
38 and are punishable by imprisonment ~~in the state prison~~ *pursuant*
39 *to subdivision (h) of Section 1170* for five, seven, or nine years.

1 When they conspire to commit any other felony, they shall be
2 punishable in the same manner and to the same extent as is
3 provided for the punishment of that felony. If the felony is one for
4 which different punishments are prescribed for different degrees,
5 the jury or court which finds the defendant guilty thereof shall
6 determine the degree of the felony the defendant conspired to
7 commit. If the degree is not so determined, the punishment for
8 conspiracy to commit the felony shall be that prescribed for the
9 lesser degree, except in the case of conspiracy to commit murder,
10 in which case the punishment shall be that prescribed for murder
11 in the first degree.

12 If the felony is conspiracy to commit two or more felonies which
13 have different punishments and the commission of those felonies
14 constitute but one offense of conspiracy, the penalty shall be that
15 prescribed for the felony which has the greater maximum term.

16 When they conspire to do an act described in paragraph (4), they
17 shall be punishable by imprisonment ~~in the state prison, or by~~
18 ~~imprisonment in the a county jail for not more than one year, or~~
19 *by imprisonment pursuant to subdivision (h) of Section 1170, or*
20 *by a fine not exceeding ten thousand dollars (\$10,000), or by both*
21 *that imprisonment and fine.*

22 When they conspire to do any of the other acts described in this
23 section, they shall be punishable by imprisonment ~~in the a county~~
24 ~~jail for not more than one year, or in the state prison pursuant to~~
25 *subdivision (h) of Section 1170, or by a fine not exceeding ten*
26 *thousand dollars (\$10,000), or by both that imprisonment and fine.*
27 When they receive a felony conviction for conspiring to commit
28 identity theft, as defined in Section 530.5, the court may impose
29 a fine of up to twenty-five thousand dollars (\$25,000).

30 All cases of conspiracy may be prosecuted and tried in the
31 superior court of any county in which any overt act tending to
32 effect the conspiracy shall be done.

33 (b) Upon a trial for conspiracy, in a case where an overt act is
34 necessary to constitute the offense, the defendant cannot be
35 convicted unless one or more overt acts are expressly alleged in
36 the indictment or information, nor unless one of the acts alleged
37 is proved; but other overt acts not alleged may be given in
38 evidence.

39 *SEC. 273. Section 186.10 of the Penal Code is amended to*
40 *read:*

186.10. (a) Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars (\$5,000), or a total value exceeding twenty-five thousand dollars (\$25,000) within a 30-day period, through one or more financial institutions (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering. The aggregation periods do not create an obligation for financial institutions to record, report, create, or implement tracking systems or otherwise monitor transactions involving monetary instruments in any time period. In consideration of the constitutional right to counsel afforded by the Sixth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, when a case involves an attorney who accepts a fee for representing a client in a criminal investigation or proceeding, the prosecution shall additionally be required to prove that the monetary instrument was accepted by the attorney with the intent to disguise or aid in disguising the source of the funds or the nature of the criminal activity.

A violation of this section shall be punished by imprisonment in a county jail for not more than one year or ~~in the state prison pursuant to subdivision (h) of Section 1170~~, by a fine of not more than two hundred fifty thousand dollars (\$250,000) or twice the value of the property transacted, whichever is greater, or by both that imprisonment and fine. However, for a second or subsequent conviction for a violation of this section, the maximum fine that may be imposed is five hundred thousand dollars (\$500,000) or five times the value of the property transacted, whichever is greater.

(b) Notwithstanding any other law, for purposes of this section, each individual transaction conducted in excess of five thousand dollars (\$5,000), each series of transactions conducted within a seven-day period that total in excess of five thousand dollars (\$5,000), or each series of transactions conducted within a 30-day period that total in excess of twenty-five thousand dollars (\$25,000), shall constitute a separate, punishable offense.

(c) (1) Any person who is punished under subdivision (a) by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ shall also be subject to an additional term of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ as follows:

(A) If the value of the transaction or transactions exceeds fifty thousand dollars (\$50,000) but is less than one hundred fifty thousand dollars (\$150,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of one year.

(B) If the value of the transaction or transactions exceeds one hundred fifty thousand dollars (\$150,000) but is less than one million dollars (\$1,000,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of two years.

(C) If the value of the transaction or transactions exceeds one million dollars (\$1,000,000), but is less than two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise imposed pursuant to this section, shall impose an additional term of imprisonment of three years.

(D) If the value of the transaction or transactions exceeds two million five hundred thousand dollars (\$2,500,000), the court, in addition to and consecutive to the felony punishment otherwise prescribed by this section, shall impose an additional term of imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common

1 scheme or plan and the aggregate value of the alleged transactions
2 or attempted transactions is of a value covered by paragraph (1).

3 (d) All pleadings under this section shall remain subject to the
4 rules of joinder and severance stated in Section 954.

5 SEC. 275. *Section 186.22 of the Penal Code, as amended by*
6 *Section 1 of Chapter 256 of the Statutes of 2010, is amended to*
7 *read:*

8 186.22. (a) Any person who actively participates in any
9 criminal street gang with knowledge that its members engage in
10 or have engaged in a pattern of criminal gang activity, and who
11 willfully promotes, furthers, or assists in any felonious criminal
12 conduct by members of that gang, shall be punished by
13 imprisonment in a county jail for a period not to exceed one year,
14 or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h)*
15 *of Section 1170* for 16 months, or two or three years.

16 (b) (1) Except as provided in paragraphs (4) and (5), any person
17 who is convicted of a felony committed for the benefit of, at the
18 direction of, or in association with any criminal street gang, with
19 the specific intent to promote, further, or assist in any criminal
20 conduct by gang members, shall, upon conviction of that felony,
21 in addition and consecutive to the punishment prescribed for the
22 felony or attempted felony of which he or she has been convicted,
23 be punished as follows:

24 (A) Except as provided in subparagraphs (B) and (C), the person
25 shall be punished by an additional term *pursuant to subdivision*
26 *(h) of Section 1170* of two, three, or four years at the court's
27 discretion.

28 (B) If the felony is a serious felony, as defined in subdivision
29 (c) of Section 1192.7, the person shall be punished by an additional
30 term of five years *in the state prison*.

31 (C) If the felony is a violent felony, as defined in subdivision
32 (c) of Section 667.5, the person shall be punished by an additional
33 term of 10 years *in the state prison*.

34 (2) If the underlying felony described in paragraph (1) is
35 committed on the grounds of, or within 1,000 feet of, a public or
36 private elementary, vocational, junior high, or high school, during
37 hours in which the facility is open for classes or school-related
38 programs or when minors are using the facility, that fact shall be
39 a circumstance in aggravation of the crime in imposing a term
40 under paragraph (1).

1 (3) The court shall select the sentence enhancement which, in
2 the court's discretion, best serves the interests of justice and shall
3 state the reasons for its choice on the record at the time of the
4 sentencing in accordance with the provisions of subdivision (d) of
5 Section 1170.1.

6 (4) Any person who is convicted of a felony enumerated in this
7 paragraph committed for the benefit of, at the direction of, or in
8 association with any criminal street gang, with the specific intent
9 to promote, further, or assist in any criminal conduct by gang
10 members, shall, upon conviction of that felony, be sentenced to
11 an indeterminate term of life imprisonment with a minimum term
12 of the indeterminate sentence calculated as the greater of:

13 (A) The term determined by the court pursuant to Section 1170
14 for the underlying conviction, including any enhancement
15 applicable under Chapter 4.5 (commencing with Section 1170) of
16 Title 7 of Part 2, or any period prescribed by Section 3046, if the
17 felony is any of the offenses enumerated in subparagraph (B) or
18 (C) of this paragraph.

19 (B) Imprisonment in the state prison for 15 years, if the felony
20 is a home invasion robbery, in violation of subparagraph (A) of
21 paragraph (1) of subdivision (a) of Section 213; carjacking, as
22 defined in Section 215; a felony violation of Section 246; or a
23 violation of Section 12022.55.

24 (C) Imprisonment in the state prison for seven years, if the
25 felony is extortion, as defined in Section 519; or threats to victims
26 and witnesses, as defined in Section 136.1.

27 (5) Except as provided in paragraph (4), any person who violates
28 this subdivision in the commission of a felony punishable by
29 imprisonment in the state prison for life shall not be paroled until
30 a minimum of 15 calendar years have been served.

31 (c) If the court grants probation or suspends the execution of
32 sentence imposed upon the defendant for a violation of subdivision
33 (a), or in cases involving a true finding of the enhancement
34 enumerated in subdivision (b), the court shall require that the
35 defendant serve a minimum of 180 days in a county jail as a
36 condition thereof.

37 (d) Any person who is convicted of a public offense punishable
38 as a felony or a misdemeanor, which is committed for the benefit
39 of, at the direction of, or in association with any criminal street
40 gang, with the specific intent to promote, further, or assist in any

1 criminal conduct by gang members, shall be punished by
2 imprisonment in the county jail not to exceed one year, or by
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170* for one, two, or three years, provided that any person
5 sentenced to imprisonment in the county jail *not to exceed one*
6 *year* shall be imprisoned for a period ~~not to exceed one year, but~~
7 *of* not less than 180 days, and shall not be eligible for release upon
8 completion of sentence, parole, or any other basis, until he or she
9 has served 180 days. If the court grants probation or suspends the
10 execution of sentence imposed upon the defendant, it shall require
11 as a condition thereof that the defendant serve 180 days in a county
12 jail.

13 (e) As used in this chapter, “pattern of criminal gang activity”
14 means the commission of, attempted commission of, conspiracy
15 to commit, or solicitation of, sustained juvenile petition for, or
16 conviction of two or more of the following offenses, provided at
17 least one of these offenses occurred after the effective date of this
18 chapter and the last of those offenses occurred within three years
19 after a prior offense, and the offenses were committed on separate
20 occasions, or by two or more persons:

21 (1) Assault with a deadly weapon or by means of force likely
22 to produce great bodily injury, as defined in Section 245.

23 (2) Robbery, as defined in Chapter 4 (commencing with Section
24 211) of Title 8 of Part 1.

25 (3) Unlawful homicide or manslaughter, as defined in Chapter
26 1 (commencing with Section 187) of Title 8 of Part 1.

27 (4) The sale, possession for sale, transportation, manufacture,
28 offer for sale, or offer to manufacture controlled substances as
29 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
30 the Health and Safety Code.

31 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
32 as defined in Section 246.

33 (6) Discharging or permitting the discharge of a firearm from
34 a motor vehicle, as defined in subdivisions (a) and (b) of Section
35 12034.

36 (7) Arson, as defined in Chapter 1 (commencing with Section
37 450) of Title 13.

38 (8) The intimidation of witnesses and victims, as defined in
39 Section 136.1.

- 1 (9) Grand theft, as defined in subdivision (a) or (c) of Section
2 487.
- 3 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 4 (11) Burglary, as defined in Section 459.
- 5 (12) Rape, as defined in Section 261.
- 6 (13) Looting, as defined in Section 463.
- 7 (14) Money laundering, as defined in Section 186.10.
- 8 (15) Kidnapping, as defined in Section 207.
- 9 (16) Mayhem, as defined in Section 203.
- 10 (17) Aggravated mayhem, as defined in Section 205.
- 11 (18) Torture, as defined in Section 206.
- 12 (19) Felony extortion, as defined in Sections 518 and 520.
- 13 (20) Felony vandalism, as defined in paragraph (1) of
14 subdivision (b) of Section 594.
- 15 (21) Carjacking, as defined in Section 215.
- 16 (22) The sale, delivery, or transfer of a firearm, as defined in
17 Section 12072.
- 18 (23) Possession of a pistol, revolver, or other firearm capable
19 of being concealed upon the person in violation of paragraph (1)
20 of subdivision (a) of Section 12101.
- 21 (24) Threats to commit crimes resulting in death or great bodily
22 injury, as defined in Section 422.
- 23 (25) Theft and unlawful taking or driving of a vehicle, as defined
24 in Section 10851 of the Vehicle Code.
- 25 (26) Felony theft of an access card or account information, as
26 defined in Section 484e.
- 27 (27) Counterfeiting, designing, using, or attempting to use an
28 access card, as defined in Section 484f.
- 29 (28) Felony fraudulent use of an access card or account
30 information, as defined in Section 484g.
- 31 (29) Unlawful use of personal identifying information to obtain
32 credit, goods, services, or medical information, as defined in
33 Section 530.5.
- 34 (30) Wrongfully obtaining Department of Motor Vehicles
35 documentation, as defined in Section 529.7.
- 36 (31) Prohibited possession of a firearm in violation of Section
37 12021.
- 38 (32) Carrying a concealed firearm in violation of Section 12025.
- 39 (33) Carrying a loaded firearm in violation of Section 12031.

1 (f) As used in this chapter, “criminal street gang” means any
2 ongoing organization, association, or group of three or more
3 persons, whether formal or informal, having as one of its primary
4 activities the commission of one or more of the criminal acts
5 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
6 inclusive, of subdivision (e), having a common name or common
7 identifying sign or symbol, and whose members individually or
8 collectively engage in or have engaged in a pattern of criminal
9 gang activity.

10 (g) Notwithstanding any other law, the court may strike the
11 additional punishment for the enhancements provided in this
12 section or refuse to impose the minimum jail sentence for
13 misdemeanors in an unusual case where the interests of justice
14 would best be served, if the court specifies on the record and enters
15 into the minutes the circumstances indicating that the interests of
16 justice would best be served by that disposition.

17 (h) Notwithstanding any other provision of law, for each person
18 committed to the Division of Juvenile Facilities for a conviction
19 pursuant to subdivision (a) or (b) of this section, the offense shall
20 be deemed one for which the state shall pay the rate of 100 percent
21 of the per capita institutional cost of the Division of Juvenile
22 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
23 Code.

24 (i) In order to secure a conviction or sustain a juvenile petition,
25 pursuant to subdivision (a) it is not necessary for the prosecution
26 to prove that the person devotes all, or a substantial part, of his or
27 her time or efforts to the criminal street gang, nor is it necessary
28 to prove that the person is a member of the criminal street gang.
29 Active participation in the criminal street gang is all that is
30 required.

31 (j) A pattern of gang activity may be shown by the commission
32 of one or more of the offenses enumerated in paragraphs (26) to
33 (30), inclusive, of subdivision (e), and the commission of one or
34 more of the offenses enumerated in paragraphs (1) to (25),
35 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern
36 of gang activity cannot be established solely by proof of
37 commission of offenses enumerated in paragraphs (26) to (30),
38 inclusive, of subdivision (e), alone.

(k) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

SEC. 276. Section 186.22 of the Penal Code, as amended by Section 2 of Chapter 256 of the Statutes of 2010, is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term pursuant to subdivision (h) of Section 1170 of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years in the state prison.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years in the state prison.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

1 (3) The court shall order the imposition of the middle term of
2 the sentence enhancement, unless there are circumstances in
3 aggravation or mitigation. The court shall state the reasons for its
4 choice of sentencing enhancements on the record at the time of
5 the sentencing.

6 (4) Any person who is convicted of a felony enumerated in this
7 paragraph committed for the benefit of, at the direction of, or in
8 association with any criminal street gang, with the specific intent
9 to promote, further, or assist in any criminal conduct by gang
10 members, shall, upon conviction of that felony, be sentenced to
11 an indeterminate term of life imprisonment with a minimum term
12 of the indeterminate sentence calculated as the greater of:

13 (A) The term determined by the court pursuant to Section 1170
14 for the underlying conviction, including any enhancement
15 applicable under Chapter 4.5 (commencing with Section 1170) of
16 Title 7 of Part 2, or any period prescribed by Section 3046, if the
17 felony is any of the offenses enumerated in subparagraph (B) or
18 (C) of this paragraph.

19 (B) Imprisonment in the state prison for 15 years, if the felony
20 is a home invasion robbery, in violation of subparagraph (A) of
21 paragraph (1) of subdivision (a) of Section 213; carjacking, as
22 defined in Section 215; a felony violation of Section 246; or a
23 violation of Section 12022.55.

24 (C) Imprisonment in the state prison for seven years, if the
25 felony is extortion, as defined in Section 519; or threats to victims
26 and witnesses, as defined in Section 136.1.

27 (5) Except as provided in paragraph (4), any person who violates
28 this subdivision in the commission of a felony punishable by
29 imprisonment in the state prison for life shall not be paroled until
30 a minimum of 15 calendar years have been served.

31 (c) If the court grants probation or suspends the execution of
32 sentence imposed upon the defendant for a violation of subdivision
33 (a), or in cases involving a true finding of the enhancement
34 enumerated in subdivision (b), the court shall require that the
35 defendant serve a minimum of 180 days in a county jail as a
36 condition thereof.

37 (d) Any person who is convicted of a public offense punishable
38 as a felony or a misdemeanor, which is committed for the benefit
39 of, at the direction of, or in association with any criminal street
40 gang, with the specific intent to promote, further, or assist in any

1 criminal conduct by gang members, shall be punished by
2 imprisonment in the county jail not to exceed one year, or by
3 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
4 *Section 1170* for one, two, or three years, provided that any person
5 sentenced to imprisonment in the county jail *not exceeding one*
6 *year* shall be imprisoned for a period ~~not to exceed one year, but~~
7 *of* not less than 180 days, and shall not be eligible for release upon
8 completion of sentence, parole, or any other basis, until he or she
9 has served 180 days. If the court grants probation or suspends the
10 execution of sentence imposed upon the defendant, it shall require
11 as a condition thereof that the defendant serve 180 days in a county
12 jail.

13 (e) As used in this chapter, “pattern of criminal gang activity”
14 means the commission of, attempted commission of, conspiracy
15 to commit, or solicitation of, sustained juvenile petition for, or
16 conviction of two or more of the following offenses, provided at
17 least one of these offenses occurred after the effective date of this
18 chapter and the last of those offenses occurred within three years
19 after a prior offense, and the offenses were committed on separate
20 occasions, or by two or more persons:

21 (1) Assault with a deadly weapon or by means of force likely
22 to produce great bodily injury, as defined in Section 245.

23 (2) Robbery, as defined in Chapter 4 (commencing with Section
24 211) of Title 8 of Part 1.

25 (3) Unlawful homicide or manslaughter, as defined in Chapter
26 1 (commencing with Section 187) of Title 8 of Part 1.

27 (4) The sale, possession for sale, transportation, manufacture,
28 offer for sale, or offer to manufacture controlled substances as
29 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
30 the Health and Safety Code.

31 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
32 as defined in Section 246.

33 (6) Discharging or permitting the discharge of a firearm from
34 a motor vehicle, as defined in subdivisions (a) and (b) of Section
35 12034.

36 (7) Arson, as defined in Chapter 1 (commencing with Section
37 450) of Title 13.

38 (8) The intimidation of witnesses and victims, as defined in
39 Section 136.1.

- 1 (9) Grand theft, as defined in subdivision (a) or (c) of Section
2 487.
- 3 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 4 (11) Burglary, as defined in Section 459.
- 5 (12) Rape, as defined in Section 261.
- 6 (13) Looting, as defined in Section 463.
- 7 (14) Money laundering, as defined in Section 186.10.
- 8 (15) Kidnapping, as defined in Section 207.
- 9 (16) Mayhem, as defined in Section 203.
- 10 (17) Aggravated mayhem, as defined in Section 205.
- 11 (18) Torture, as defined in Section 206.
- 12 (19) Felony extortion, as defined in Sections 518 and 520.
- 13 (20) Felony vandalism, as defined in paragraph (1) of
14 subdivision (b) of Section 594.
- 15 (21) Carjacking, as defined in Section 215.
- 16 (22) The sale, delivery, or transfer of a firearm, as defined in
17 Section 12072.
- 18 (23) Possession of a pistol, revolver, or other firearm capable
19 of being concealed upon the person in violation of paragraph (1)
20 of subdivision (a) of Section 12101.
- 21 (24) Threats to commit crimes resulting in death or great bodily
22 injury, as defined in Section 422.
- 23 (25) Theft and unlawful taking or driving of a vehicle, as defined
24 in Section 10851 of the Vehicle Code.
- 25 (26) Felony theft of an access card or account information, as
26 defined in Section 484e.
- 27 (27) Counterfeiting, designing, using, or attempting to use an
28 access card, as defined in Section 484f.
- 29 (28) Felony fraudulent use of an access card or account
30 information, as defined in Section 484g.
- 31 (29) Unlawful use of personal identifying information to obtain
32 credit, goods, services, or medical information, as defined in
33 Section 530.5.
- 34 (30) Wrongfully obtaining Department of Motor Vehicles
35 documentation, as defined in Section 529.7.
- 36 (31) Prohibited possession of a firearm in violation of Section
37 12021.
- 38 (32) Carrying a concealed firearm in violation of Section 12025.
- 39 (33) Carrying a loaded firearm in violation of Section 12031.

1 (f) As used in this chapter, “criminal street gang” means any
2 ongoing organization, association, or group of three or more
3 persons, whether formal or informal, having as one of its primary
4 activities the commission of one or more of the criminal acts
5 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
6 inclusive, of subdivision (e), having a common name or common
7 identifying sign or symbol, and whose members individually or
8 collectively engage in or have engaged in a pattern of criminal
9 gang activity.

10 (g) Notwithstanding any other law, the court may strike the
11 additional punishment for the enhancements provided in this
12 section or refuse to impose the minimum jail sentence for
13 misdemeanors in an unusual case where the interests of justice
14 would best be served, if the court specifies on the record and enters
15 into the minutes the circumstances indicating that the interests of
16 justice would best be served by that disposition.

17 (h) Notwithstanding any other provision of law, for each person
18 committed to the Division of Juvenile Facilities for a conviction
19 pursuant to subdivision (a) or (b) of this section, the offense shall
20 be deemed one for which the state shall pay the rate of 100 percent
21 of the per capita institutional cost of the Division of Juvenile
22 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
23 Code.

24 (i) In order to secure a conviction or sustain a juvenile petition,
25 pursuant to subdivision (a) it is not necessary for the prosecution
26 to prove that the person devotes all, or a substantial part, of his or
27 her time or efforts to the criminal street gang, nor is it necessary
28 to prove that the person is a member of the criminal street gang.
29 Active participation in the criminal street gang is all that is
30 required.

31 (j) A pattern of gang activity may be shown by the commission
32 of one or more of the offenses enumerated in paragraphs (26) to
33 (30), inclusive, of subdivision (e), and the commission of one or
34 more of the offenses enumerated in paragraphs (1) to (25),
35 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern
36 of gang activity cannot be established solely by proof of
37 commission of offenses enumerated in paragraphs (26) to (30),
38 inclusive, of subdivision (e), alone.

39 (k) This section shall become operative on January 1, 2012.

1 *SEC. 277. Section 186.26 of the Penal Code is amended to*
2 *read:*

3 186.26. (a) Any person who solicits or recruits another to
4 actively participate in a criminal street gang, as defined in
5 subdivision (f) of Section 186.22, with the intent that the person
6 solicited or recruited participate in a pattern of criminal street gang
7 activity, as defined in subdivision (e) of Section 186.22, or with
8 the intent that the person solicited or recruited promote, further,
9 or assist in any felonious conduct by members of the criminal street
10 gang, shall be punished by imprisonment ~~in the state prison~~
11 *pursuant to subdivision (h) of Section 1170* for 16 months, or two
12 or three years.

13 (b) Any person who threatens another person with physical
14 violence on two or more separate occasions within any 30-day
15 period with the intent to coerce, induce, or solicit any person to
16 actively participate in a criminal street gang, as defined in
17 subdivision (f) of Section 186.22, shall be punished by
18 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
19 *Section 1170* for two, three, or four years.

20 (c) Any person who uses physical violence to coerce, induce,
21 or solicit another person to actively participate in any criminal
22 street gang, as defined in subdivision (f) of Section 186.22, or to
23 prevent the person from leaving a criminal street gang, shall be
24 punished by imprisonment ~~in the state prison~~ *pursuant to*
25 *subdivision (h) of Section 1170* for three, four, or five years.

26 (d) If the person solicited, recruited, coerced, or threatened
27 pursuant to subdivision (a), (b), or (c) is a minor, an additional
28 term *pursuant to subdivision (h) of Section 1170* of three years
29 shall be imposed in addition and consecutive to the penalty
30 prescribed for a violation of any of these subdivisions.

31 (e) Nothing in this section shall be construed to limit prosecution
32 under any other provision of law.

33 *SEC. 278. Section 186.28 of the Penal Code is amended to*
34 *read:*

35 186.28. (a) Any person, corporation, or firm who shall
36 knowingly supply, sell, or give possession or control of any firearm
37 to another shall be punished by imprisonment ~~in the state prison~~
38 *pursuant to subdivision (h) of Section 1170*, or in a county jail for
39 a term not exceeding one year, or by a fine not exceeding one

1 thousand dollars (\$1,000), or by both that fine and imprisonment
2 if all of the following apply:

3 (1) The person, corporation, or firm has actual knowledge that
4 the person will use the firearm to commit a felony described in
5 subdivision (e) of Section 186.22, while actively participating in
6 any criminal street gang, as defined in subdivision (f) of Section
7 186.22, the members of which engage in a pattern of criminal
8 activity, as defined in subdivision (e) of Section 186.22.

9 (2) The firearm is used to commit the felony.

10 (3) A conviction for the felony violation under subdivision (e)
11 of Section 186.22 has first been obtained of the person to whom
12 the firearm was supplied, sold, or given possession or control
13 pursuant to this section.

14 (b) This section shall only be applicable where the person is not
15 convicted as a principal to the felony offense committed by the
16 person to whom the firearm was supplied, sold, or given possession
17 or control pursuant to this section.

18 *SEC. 279. Section 186.33 of the Penal Code, as amended by*
19 *Section 3 of Chapter 256 of the Statutes of 2010, is amended to*
20 *read:*

21 186.33. (a) Any person required to register pursuant to Section
22 186.30 who knowingly violates any of its provisions is guilty of
23 a misdemeanor.

24 (b) (1) Any person who knowingly fails to register pursuant to
25 Section 186.30 and is subsequently convicted of, or any person
26 for whom a petition is subsequently sustained for a violation of,
27 any of the offenses specified in Section 186.30, shall be punished
28 by an additional term of imprisonment ~~in the state prison~~ *pursuant*
29 *to subdivision (h) of Section 1170* for 16 months, or two, or three
30 years. The court shall select the sentence enhancement which, in
31 the court's discretion, best serves the interests of justice and shall
32 state the reasons for its choice on the record at the time of
33 sentencing in accordance with the provisions of subdivision (d) of
34 Section 1170.1.

35 (2) The existence of any fact bringing a person under this
36 subdivision shall be alleged in the information, indictment, or
37 petition, and be either admitted by the defendant or minor in open
38 court, or found to be true or not true by the trier of fact.

1 (c) This section shall remain in effect only until January 1, 2012,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2012, deletes or extends that date.

4 *SEC. 280. Section 186.33 of the Penal Code, as amended by*
5 *Section 4 of Chapter 256 of the Statutes of 2010, is amended to*
6 *read:*

7 186.33. (a) Any person required to register pursuant to Section
8 186.30 who knowingly violates any of its provisions is guilty of
9 a misdemeanor.

10 (b) (1) Any person who knowingly fails to register pursuant to
11 Section 186.30 and is subsequently convicted of, or any person
12 for whom a petition is subsequently sustained for a violation of,
13 any of the offenses specified in Section 186.30, shall be punished
14 by an additional term of imprisonment ~~in the state prison pursuant~~
15 *to subdivision (h) of Section 1170* for 16 months, or two, or three
16 years. The court shall order imposition of the middle term unless
17 there are circumstances in aggravation or mitigation. The court
18 shall state its reasons for the enhancement choice on the record at
19 the time of sentencing.

20 (2) The existence of any fact bringing a person under this
21 subdivision shall be alleged in the information, indictment, or
22 petition, and be either admitted by the defendant or minor in open
23 court, or found to be true or not true by the trier of fact.

24 (c) This section shall become operative on January 1, 2012.

25 *SEC. 281. Section 191.5 of the Penal Code is amended to read:*

26 191.5. (a) Gross vehicular manslaughter while intoxicated is
27 the unlawful killing of a human being without malice aforethought,
28 in the driving of a vehicle, where the driving was in violation of
29 Section 23140, 23152, or 23153 of the Vehicle Code, and the
30 killing was either the proximate result of the commission of an
31 unlawful act, not amounting to a felony, and with gross negligence,
32 or the proximate result of the commission of a lawful act that might
33 produce death, in an unlawful manner, and with gross negligence.

34 (b) Vehicular manslaughter while intoxicated is the unlawful
35 killing of a human being without malice aforethought, in the
36 driving of a vehicle, where the driving was in violation of Section
37 23140, 23152, or 23153 of the Vehicle Code, and the killing was
38 either the proximate result of the commission of an unlawful act,
39 not amounting to a felony, but without gross negligence, or the
40 proximate result of the commission of a lawful act that might

1 produce death, in an unlawful manner, but without gross
2 negligence.

3 (c) (1) Except as provided in subdivision (d), gross vehicular
4 manslaughter while intoxicated in violation of subdivision (a) is
5 punishable by imprisonment in the state prison for 4, 6, or 10 years.

6 (2) Vehicular manslaughter while intoxicated in violation of
7 subdivision (b) is punishable by imprisonment in a county jail for
8 not more than one year or by imprisonment ~~in the state prison~~
9 *pursuant to subdivision (h) of Section 1170* for 16 months or 2 or
10 4 years.

11 (d) A person convicted of violating subdivision (a) who has one
12 or more prior convictions of this section or of paragraph (1) of
13 subdivision (c) of Section 192, subdivision (a) or (b) of Section
14 192.5 of this code, or of violating Section 23152 punishable under
15 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or
16 convicted of Section 23153 of, the Vehicle Code, shall be punished
17 by imprisonment in the state prison for a term of 15 years to life.
18 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title
19 1 of Part 3 shall apply to reduce the term imposed pursuant to this
20 subdivision.

21 (e) This section shall not be construed as prohibiting or
22 precluding a charge of murder under Section 188 upon facts
23 exhibiting wantonness and a conscious disregard for life to support
24 a finding of implied malice, or upon facts showing malice
25 consistent with the holding of the California Supreme Court in
26 *People v. Watson*, 30 Cal. 3d 290.

27 (f) This section shall not be construed as making any homicide
28 in the driving of a vehicle or the operation of a vessel punishable
29 which is not a proximate result of the commission of an unlawful
30 act, not amounting to felony, or of the commission of a lawful act
31 which might produce death, in an unlawful manner.

32 (g) For the penalties in subdivision (d) to apply, the existence
33 of any fact required under subdivision (d) shall be alleged in the
34 information or indictment and either admitted by the defendant in
35 open court or found to be true by the trier of fact.

36 *SEC. 282. Section 193 of the Penal Code is amended to read:*

37 193. (a) Voluntary manslaughter is punishable by
38 imprisonment in the state prison for 3, 6, or 11 years.

(b) Involuntary manslaughter is punishable by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(c) Vehicular manslaughter is punishable as follows:

(1) A violation of paragraph (1) of subdivision (c) of Section 192 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four, or six years.

(2) A violation of paragraph (2) of subdivision (c) of Section 192 is punishable by imprisonment in the county jail for not more than one year.

(3) A violation of paragraph (3) of subdivision (c) of Section 192 is punishable by imprisonment in the state prison for 4, 6, or 10 years.

SEC. 283. Section 193.5 of the Penal Code is amended to read:

193.5. Manslaughter committed during the operation of a vessel is punishable as follows:

(a) A violation of subdivision (a) of Section 192.5 is punishable by imprisonment in the state prison for 4, 6, or ten years.

(b) A violation of subdivision (b) of Section 192.5 is punishable by imprisonment in a county jail for not more than one year or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for 16 months or 2 or 4 years.

(c) A violation of subdivision (c) of Section 192.5 is punishable either by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for two, four, or six years.

(d) A violation of subdivision (d) of Section 192.5 is punishable by imprisonment in the county jail for not more than one year.

SEC. 284. Section 210.5 of the Penal Code is amended to read:

210.5. Every person who commits the offense of false imprisonment, as defined in Section 236, against a person for purposes of protection from arrest, which substantially increases the risk of harm to the victim, or for purposes of using the person as a shield is punishable by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for three, five, or eight years.

SEC. 285. Section 217.1 of the Penal Code is amended to read:

217.1. (a) Except as provided in subdivision (b), every person who commits any assault upon the President or Vice President of

1 the United States, the Governor of any state or territory, any justice,
2 judge, or former judge of any local, state, or federal court of record,
3 any commissioner, referee, or other subordinate judicial officer of
4 any court of record, the secretary or director of any executive
5 agency or department of the United States or any state or territory,
6 or any other official of the United States or any state or territory
7 holding elective office, any mayor, city council member, county
8 supervisor, sheriff, district attorney, prosecutor or assistant
9 prosecutor of any local, state, or federal prosecutor's office, a
10 former prosecutor or assistant prosecutor of any local, state, or
11 federal prosecutor's office, public defender or assistant public
12 defender of any local, state, or federal public defender's office, a
13 former public defender or assistant public defender of any local,
14 state, or federal public defender's office, the chief of police of any
15 municipal police department, any peace officer, any juror in any
16 local, state, or federal court of record, or the immediate family of
17 any of these officials, in retaliation for or to prevent the
18 performance of the victim's official duties, shall be punished by
19 imprisonment in the county jail not exceeding one year or by
20 imprisonment in the state prison pursuant to subdivision (h) of
21 Section 1170.

22 (b) Notwithstanding subdivision (a), every person who attempts
23 to commit murder against any person listed in subdivision (a) in
24 retaliation for or to prevent the performance of the victim's official
25 duties, shall be confined in the state prison for a term of 15 years
26 to life. The provisions of Article 2.5 (commencing with Section
27 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any
28 minimum term of 15 years in a state prison imposed pursuant to
29 this section, but that person shall not otherwise be released on
30 parole prior to ~~such~~ that time.

31 (c) For the purposes of this section, the following words have
32 the following meanings:

33 (1) "Immediate family" means spouse, child, stepchild, brother,
34 stepbrother, sister, stepsister, mother, stepmother, father, or
35 stepfather.

36 (2) "Peace officer" means any person specified in subdivision
37 (a) of Section 830.1 or Section 830.5.

38 *SEC. 286. Section 218.1 of the Penal Code is amended to read:*

39 218.1. Any person who unlawfully and with gross negligence
40 places or causes to be placed any obstruction upon or near the track

1 of any railroad that proximately results in either the damaging or
2 derailling of any passenger, freight, or other train, or injures a rail
3 passenger or employee, shall be punished by imprisonment ~~in the~~
4 ~~state prison pursuant to subdivision (h) of Section 1170~~ for two,
5 three, or four years, or by imprisonment in a county jail for not
6 more than one year, or by a fine not to exceed two thousand five
7 hundred dollars (\$2,500), or by both that imprisonment and fine.

8 *SEC. 287. Section 219.1 of the Penal Code is amended to read:*

9 219.1. Every person who unlawfully throws, hurls or projects
10 at a vehicle operated by a common carrier, while such vehicle is
11 either in motion or stationary, any rock, stone, brick, bottle, piece
12 of wood or metal or any other missile of any kind or character, or
13 does any unlawful act, with the intention of wrecking such vehicle
14 and doing bodily harm, and thus wrecks the same and causes bodily
15 harm, is guilty of a felony and punishable by imprisonment ~~in the~~
16 ~~state prison pursuant to subdivision (h) of Section 1170~~ for two,
17 four, or six years.

18 *SEC. 287.5. Section 222 of the Penal Code is amended to read:*

19 222. Every person guilty of administering to another any
20 chloroform, ether, laudanum, or any controlled substance,
21 anaesthetic, or intoxicating agent, with intent thereby to enable or
22 assist himself or herself or any other person to commit a felony,
23 is guilty of a felony *punishable by imprisonment in the state prison*
24 *for 16 months, or two or three years.*

25 *SEC. 288. Section 237 of the Penal Code is amended to read:*

26 237. (a) False imprisonment is punishable by a fine not
27 exceeding one thousand dollars (\$1,000), or by imprisonment in
28 the county jail for not more than one year, or by both that fine and
29 imprisonment. If the false imprisonment be effected by violence,
30 menace, fraud, or deceit, it shall be punishable by imprisonment
31 ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

32 (b) False imprisonment of an elder or dependent adult by use
33 of violence, menace, fraud, or deceit shall be punishable as
34 described in subdivision (f) of Section 368.

35 *SEC. 289. Section 241.1 of the Penal Code is amended to read:*

36 241.1. When an assault is committed against the person of a
37 custodial officer as defined in Section 831 or 831.5, and the person
38 committing the offense knows or reasonably should know that
39 ~~such~~ the victim is ~~such~~ a custodial officer engaged in the
40 performance of his or her duties, the offense shall be punished by

1 imprisonment in the county jail not exceeding one year or by
2 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
3 *Section 1170*.

4 *SEC. 290. Section 241.4 of the Penal Code is amended to read:*

5 241.4. An assault is punishable by fine not exceeding one
6 thousand dollars (\$1,000), or by imprisonment in the county jail
7 not exceeding six months, or by both. When the assault is
8 committed against the person of a peace officer engaged in the
9 performance of his or her duties as a member of a police
10 department of a school district pursuant to Section 38000 of the
11 Education Code, and the person committing the offense knows or
12 reasonably should know that the victim is a peace officer engaged
13 in the performance of his or her duties, the offense shall be
14 punished by imprisonment in the county jail not exceeding one
15 year or by imprisonment ~~in the state prison pursuant to subdivision~~
16 *(h) of Section 1170*.

17 *SEC. 291. Section 241.7 of the Penal Code is amended to read:*

18 241.7. Any person who is a party to a civil or criminal action
19 in which a jury has been selected to try the case and who, while
20 the legal action is pending or after the conclusion of the trial,
21 commits an assault against any juror or alternate juror who was
22 selected and sworn in that legal action, shall be punished by a fine
23 not to exceed two thousand dollars (\$2,000), or by imprisonment
24 in the county jail not exceeding one year, or by both such fine and
25 imprisonment, or by imprisonment ~~in the state prison pursuant to~~
26 *subdivision (h) of Section 1170*.

27 *SEC. 292. Section 243 of the Penal Code is amended to read:*

28 243. (a) A battery is punishable by a fine not exceeding two
29 thousand dollars (\$2,000), or by imprisonment in a county jail not
30 exceeding six months, or by both that fine and imprisonment.

31 (b) When a battery is committed against the person of a peace
32 officer, custodial officer, firefighter, emergency medical technician,
33 lifeguard, process server, traffic officer, code enforcement officer,
34 or animal control officer engaged in the performance of his or her
35 duties, whether on or off duty, including when the peace officer
36 is in a police uniform and is concurrently performing the duties
37 required of him or her as a peace officer while also employed in
38 a private capacity as a part-time or casual private security guard
39 or patrolman, or a nonsworn employee of a probation department
40 engaged in the performance of his or her duties, whether on or off

duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, code enforcement officer, or animal control officer engaged in the performance of his or her duties, nonsworn employee of a probation department, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) (1) When a battery is committed against a custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, or a nonsworn employee of a probation department engaged in the performance of his or her duties, whether on or off duty, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a nonsworn employee of a probation department, custodial officer, firefighter, emergency medical technician, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by a fine of not more than two thousand dollars (\$2,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16 months, or two or three years.

(2) When the battery specified in paragraph (1) is committed against a peace officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged in the performance of his or her duties, the battery is punishable

1 by a fine of not more than ten thousand dollars (\$10,000), or by
2 imprisonment in a county jail not exceeding one year or ~~in the~~
3 ~~state prison pursuant to subdivision (h) of Section 1170~~ for 16
4 months, or two or three years, or by both that fine and
5 imprisonment.

6 (d) When a battery is committed against any person and serious
7 bodily injury is inflicted on the person, the battery is punishable
8 by imprisonment in a county jail not exceeding one year or
9 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
10 ~~Section 1170~~ for two, three, or four years.

11 (e) (1) When a battery is committed against a spouse, a person
12 with whom the defendant is cohabiting, a person who is the parent
13 of the defendant's child, former spouse, fiancé, or fiancée, or a
14 person with whom the defendant currently has, or has previously
15 had, a dating or engagement relationship, the battery is punishable
16 by a fine not exceeding two thousand dollars (\$2,000), or by
17 imprisonment in a county jail for a period of not more than one
18 year, or by both that fine and imprisonment. If probation is granted,
19 or the execution or imposition of the sentence is suspended, it shall
20 be a condition thereof that the defendant participate in, for no less
21 than one year, and successfully complete, a batterer's treatment
22 program, as defined in Section 1203.097, or if none is available,
23 another appropriate counseling program designated by the court.
24 However, this provision shall not be construed as requiring a city,
25 a county, or a city and county to provide a new program or higher
26 level of service as contemplated by Section 6 of Article XIII B of
27 the California Constitution.

28 (2) Upon conviction of a violation of this subdivision, if
29 probation is granted, the conditions of probation may include, in
30 lieu of a fine, one or both of the following requirements:

31 (A) That the defendant make payments to a battered women's
32 shelter, up to a maximum of five thousand dollars (\$5,000).

33 (B) That the defendant reimburse the victim for reasonable costs
34 of counseling and other reasonable expenses that the court finds
35 are the direct result of the defendant's offense.

36 For any order to pay a fine, make payments to a battered
37 women's shelter, or pay restitution as a condition of probation
38 under this subdivision, the court shall make a determination of the
39 defendant's ability to pay. In no event shall any order to make
40 payments to a battered women's shelter be made if it would impair

1 the ability of the defendant to pay direct restitution to the victim
2 or court-ordered child support. Where the injury to a married person
3 is caused in whole or in part by the criminal acts of his or her
4 spouse in violation of this section, the community property may
5 not be used to discharge the liability of the offending spouse for
6 restitution to the injured spouse, required by Section 1203.04, as
7 operative on or before August 2, 1995, or Section 1202.4, or to a
8 shelter for costs with regard to the injured spouse and dependents,
9 required by this section, until all separate property of the offending
10 spouse is exhausted.

11 (3) Upon conviction of a violation of this subdivision, if
12 probation is granted or the execution or imposition of the sentence
13 is suspended and the person has been previously convicted of a
14 violation of this subdivision and sentenced under paragraph (1),
15 the person shall be imprisoned for not less than 48 hours in addition
16 to the conditions in paragraph (1). However, the court, upon a
17 showing of good cause, may elect not to impose the mandatory
18 minimum imprisonment as required by this subdivision and may,
19 under these circumstances, grant probation or order the suspension
20 of the execution or imposition of the sentence.

21 (4) The Legislature finds and declares that these specified crimes
22 merit special consideration when imposing a sentence so as to
23 display society's condemnation for these crimes of violence upon
24 victims with whom a close relationship has been formed.

25 (f) As used in this section:

26 (1) "Peace officer" means any person defined in Chapter 4.5
27 (commencing with Section 830) of Title 3 of Part 2.

28 (2) "Emergency medical technician" means a person who is
29 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses
30 a valid certificate or license in accordance with the standards of
31 Division 2.5 (commencing with Section 1797) of the Health and
32 Safety Code.

33 (3) "Nurse" means a person who meets the standards of Division
34 2.5 (commencing with Section 1797) of the Health and Safety
35 Code.

36 (4) "Serious bodily injury" means a serious impairment of
37 physical condition, including, but not limited to, the following:
38 loss of consciousness; concussion; bone fracture; protracted loss
39 or impairment of function of any bodily member or organ; a wound
40 requiring extensive suturing; and serious disfigurement.

1 (5) “Injury” means any physical injury which requires
2 professional medical treatment.

3 (6) “Custodial officer” means any person who has the
4 responsibilities and duties described in Section 831 and who is
5 employed by a law enforcement agency of any city or county or
6 who performs those duties as a volunteer.

7 (7) “Lifeguard” means a person defined in paragraph (5) of
8 subdivision (c) of Section 241.

9 (8) “Traffic officer” means any person employed by a city,
10 county, or city and county to monitor and enforce state laws and
11 local ordinances relating to parking and the operation of vehicles.

12 (9) “Animal control officer” means any person employed by a
13 city, county, or city and county for purposes of enforcing animal
14 control laws or regulations.

15 (10) “Dating relationship” means frequent, intimate associations
16 primarily characterized by the expectation of affectional or sexual
17 involvement independent of financial considerations.

18 (11) (A) “Code enforcement officer” means any person who
19 is not described in Chapter 4.5 (commencing with Section 830) of
20 Title 3 of Part 2 and who is employed by any governmental
21 subdivision, public or quasi-public corporation, public agency,
22 public service corporation, any town, city, county, or municipal
23 corporation, whether incorporated or chartered, who has
24 enforcement authority for health, safety, and welfare requirements,
25 and whose duties include enforcement of any statute, rules,
26 regulations, or standards, and who is authorized to issue citations,
27 or file formal complaints.

28 (B) “Code enforcement officer” also includes any person who
29 is employed by the Department of Housing and Community
30 Development who has enforcement authority for health, safety,
31 and welfare requirements pursuant to the Employee Housing Act
32 (Part 1 (commencing with Section 17000) of Division 13 of the
33 Health and Safety Code); the State Housing Law (Part 1.5
34 (commencing with Section 17910) of Division 13 of the Health
35 and Safety Code); the Mobilehomes-Manufactured Housing Act
36 (Part 2 (commencing with Section 18000) of Division 13 of the
37 Health and Safety Code); the Mobilehome Parks Act (Part 2.1
38 (commencing with Section 18200) of Division 13 of the Health
39 and Safety Code); and the Special Occupancy Parks Act (Part 2.3

(commencing with Section 18860) of Division 13 of the Health and Safety Code).

(g) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 293. Section 243.1 of the Penal Code is amended to read:

243.1. When a battery is committed against the person of a custodial officer as defined in Section 831 of the Penal Code, and the person committing the offense knows or reasonably should know that the victim is a custodial officer engaged in the performance of his or her duties, and the custodial officer is engaged in the performance of his or her duties, the offense shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170.

SEC. 294. Section 243.6 of the Penal Code is amended to read:

243.6. When a battery is committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both the fine and imprisonment. However, if an injury is inflicted on the victim, the battery shall be punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than two thousand dollars (\$2,000), or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

For purposes of this section, “school employee” has the same meaning as defined in subdivision (d) of Section 245.5.

This section shall not apply to conduct arising during the course of an otherwise lawful labor dispute.

1 SEC. 296. *Section 244.5 of the Penal Code, as amended by*
2 *Section 1 of Chapter 556 of the Statutes of 2008, is amended to*
3 *read:*

4 244.5. (a) As used in this section, “stun gun” means any item,
5 except a less lethal weapon, as defined in Section 12601, used or
6 intended to be used as either an offensive or defensive weapon
7 that is capable of temporarily immobilizing a person by the
8 infliction of an electrical charge.

9 (b) Every person who commits an assault upon the person of
10 another with a stun gun or less lethal weapon, as defined in Section
11 12601, shall be punished by imprisonment in a county jail for a
12 term not exceeding one year, or by imprisonment ~~in the state prison~~
13 *pursuant to subdivision (h) of Section 1170* for 16 months, two,
14 or three years.

15 (c) Every person who commits an assault upon the person of a
16 peace officer or firefighter with a stun gun or less lethal weapon,
17 as defined in Section 12601, who knows or reasonably should
18 know that the person is a peace officer or firefighter engaged in
19 the performance of his or her duties, when the peace officer or
20 firefighter is engaged in the performance of his or her duties, shall
21 be punished by imprisonment in the county jail for a term not
22 exceeding one year, or by imprisonment ~~in the state prison~~ *pursuant*
23 *to subdivision (h) of Section 1170* for two, three, or four years.

24 (d) This section shall not be construed to preclude or in any way
25 limit the applicability of Section 245 in any criminal prosecution.

26 SEC. 297. *Section 244.5 of the Penal Code, as amended by*
27 *Section 52 of Chapter 178 of the Statutes of 2010, is amended to*
28 *read:*

29 244.5. (a) As used in this section, “stun gun” means any item,
30 except a less lethal weapon, as defined in Section 16780, used or
31 intended to be used as either an offensive or defensive weapon
32 that is capable of temporarily immobilizing a person by the
33 infliction of an electrical charge.

34 (b) Every person who commits an assault upon the person of
35 another with a stun gun or less lethal weapon, as defined in Section
36 16780, shall be punished by imprisonment in a county jail for a
37 term not exceeding one year, or by imprisonment ~~in the state prison~~
38 *pursuant to subdivision (h) of Section 1170* for 16 months, two,
39 or three years.

1 (c) Every person who commits an assault upon the person of a
2 peace officer or firefighter with a stun gun or less lethal weapon,
3 as defined in Section 16780, who knows or reasonably should
4 know that the person is a peace officer or firefighter engaged in
5 the performance of his or her duties, when the peace officer or
6 firefighter is engaged in the performance of his or her duties, shall
7 be punished by imprisonment in the county jail for a term not
8 exceeding one year, or by imprisonment ~~in the state prison pursuant~~
9 *to subdivision (h) of Section 1170* for two, three, or four years.

10 (d) This section shall not be construed to preclude or in any way
11 limit the applicability of Section 245 in any criminal prosecution.

12 *SEC. 298. Section 245 of the Penal Code, as amended by*
13 *Section 53 of Chapter 178 of the Statutes of 2010, is amended to*
14 *read:*

15 245. (a) (1) Any person who commits an assault upon the
16 person of another with a deadly weapon or instrument other than
17 a firearm or by any means of force likely to produce great bodily
18 injury shall be punished by imprisonment ~~in the state prison~~
19 *pursuant to subdivision (h) of Section 1170* for two, three, or four
20 years, or in a county jail for not exceeding one year, or by a fine
21 not exceeding ten thousand dollars (\$10,000), or by both the fine
22 and imprisonment.

23 (2) Any person who commits an assault upon the person of
24 another with a firearm shall be punished by imprisonment in the
25 state prison for two, three, or four years, or in a county jail for not
26 less than six months and not exceeding one year, or by both a fine
27 not exceeding ten thousand dollars (\$10,000) and imprisonment.

28 (3) Any person who commits an assault upon the person of
29 another with a machinegun, as defined in Section 16880, or an
30 assault weapon, as defined in Section 30510 or 30515, or a .50
31 BMG rifle, as defined in Section 30530, shall be punished by
32 imprisonment in the state prison for 4, 8, or 12 years.

33 (b) Any person who commits an assault upon the person of
34 another with a semiautomatic firearm shall be punished by
35 imprisonment in the state prison for three, six, or nine years.

36 (c) Any person who commits an assault with a deadly weapon
37 or instrument, other than a firearm, or by any means likely to
38 produce great bodily injury upon the person of a peace officer or
39 firefighter, and who knows or reasonably should know that the
40 victim is a peace officer or firefighter engaged in the performance

1 of his or her duties, when the peace officer or firefighter is engaged
2 in the performance of his or her duties, shall be punished by
3 imprisonment in the state prison for three, four, or five years.

4 (d) (1) Any person who commits an assault with a firearm upon
5 the person of a peace officer or firefighter, and who knows or
6 reasonably should know that the victim is a peace officer or
7 firefighter engaged in the performance of his or her duties, when
8 the peace officer or firefighter is engaged in the performance of
9 his or her duties, shall be punished by imprisonment in the state
10 prison for four, six, or eight years.

11 (2) Any person who commits an assault upon the person of a
12 peace officer or firefighter with a semiautomatic firearm and who
13 knows or reasonably should know that the victim is a peace officer
14 or firefighter engaged in the performance of his or her duties, when
15 the peace officer or firefighter is engaged in the performance of
16 his or her duties, shall be punished by imprisonment in the state
17 prison for five, seven, or nine years.

18 (3) Any person who commits an assault with a machinegun, as
19 defined in Section 16880, or an assault weapon, as defined in
20 Section 30510 or 30515, or a .50 BMG rifle, as defined in Section
21 30530, upon the person of a peace officer or firefighter, and who
22 knows or reasonably should know that the victim is a peace officer
23 or firefighter engaged in the performance of his or her duties, shall
24 be punished by imprisonment in the state prison for 6, 9, or 12
25 years.

26 (e) When a person is convicted of a violation of this section in
27 a case involving use of a deadly weapon or instrument or firearm,
28 and the weapon or instrument or firearm is owned by that person,
29 the court shall order that the weapon or instrument or firearm be
30 deemed a nuisance, and it shall be confiscated and disposed of in
31 the manner provided by Sections 18000 and 18005.

32 (f) As used in this section, “peace officer” refers to any person
33 designated as a peace officer in Chapter 4.5 (commencing with
34 Section 830) of Title 3 of Part 2.

35 *SEC. 299. Section 245.6 of the Penal Code is amended to read:*

36 245.6. (a) It shall be unlawful to engage in hazing, as defined
37 in this section.

38 (b) “Hazing” means any method of initiation or preinitiation
39 into a student organization or student body, whether or not the
40 organization or body is officially recognized by an educational

1 institution, which is likely to cause serious bodily injury to any
2 former, current, or prospective student of any school, community
3 college, college, university, or other educational institution in this
4 state. The term “hazing” does not include customary athletic events
5 or school-sanctioned events.

6 (c) A violation of this section that does not result in serious
7 bodily injury is a misdemeanor, punishable by a fine of not less
8 than one hundred dollars (\$100), nor more than five thousand
9 dollars (\$5,000), or imprisonment in the county jail for not more
10 than one year, or both.

11 (d) Any person who personally engages in hazing that results
12 in death or serious bodily injury as defined in paragraph (4) of
13 subdivision (f) of Section 243 of the Penal Code, is guilty of either
14 a misdemeanor or a felony, and shall be punished by imprisonment
15 in county jail not exceeding one year, or by imprisonment ~~in the~~
16 ~~state prison pursuant to subdivision (h) of Section 1170.~~

17 (e) The person against whom the hazing is directed may
18 commence a civil action for injury or damages. The action may
19 be brought against any participants in the hazing, or any
20 organization to which the student is seeking membership whose
21 agents, directors, trustees, managers, or officers authorized,
22 requested, commanded, participated in, or ratified the hazing.

23 (f) Prosecution under this section shall not prohibit prosecution
24 under any other provision of law.

25 *SEC. 300. Section 246.3 of the Penal Code is amended to read:*

26 246.3. (a) Except as otherwise authorized by law, any person
27 who willfully discharges a firearm in a grossly negligent manner
28 which could result in injury or death to a person is guilty of a public
29 offense and shall be punished by imprisonment in a county jail not
30 exceeding one year, or by imprisonment ~~in the state prison pursuant~~
31 ~~to subdivision (h) of Section 1170.~~

32 (b) Except as otherwise authorized by law, any person who
33 willfully discharges a BB device in a grossly negligent manner
34 which could result in injury or death to a person is guilty of a public
35 offense and shall be punished by imprisonment in a county jail not
36 exceeding one year.

37 (c) As used in this section, “BB device” means any instrument
38 that expels a projectile, such as a BB or a pellet, through the force
39 of air pressure, gas pressure, or spring action.

40 *SEC. 301. Section 247.5 of the Penal Code is amended to read:*

1 247.5. Any person who willfully and maliciously discharges
2 a laser at an aircraft, whether in motion or in flight, while occupied,
3 is guilty of a violation of this section, which shall be punishable
4 as either a misdemeanor by imprisonment in the county jail for
5 not more than one year or by a fine of one thousand dollars
6 (\$1,000), or a felony by imprisonment ~~in the state prison pursuant~~
7 *to subdivision (h) of Section 1170* for 16 months, two years, or
8 three years, or by a fine of two thousand dollars (\$2,000). This
9 section does not apply to the conduct of laser development activity
10 by or on behalf of the United States Armed Forces.

11 As used in this section, “aircraft” means any contrivance intended
12 for and capable of transporting persons through the airspace.

13 As used in this section, “laser” means a device that utilizes the
14 natural oscillations of atoms or molecules between energy levels
15 for generating coherent electromagnetic radiation in the ultraviolet,
16 visible, or infrared region of the spectrum, and when discharged
17 exceeds one milliwatt continuous wave.

18 SEC. 302. *Section 261.5 of the Penal Code is amended to read:*

19 261.5. (a) Unlawful sexual intercourse is an act of sexual
20 intercourse accomplished with a person who is not the spouse of
21 the perpetrator, if the person is a minor. For the purposes of this
22 section, a “minor” is a person under the age of 18 years and an
23 “adult” is a person who is at least 18 years of age.

24 (b) Any person who engages in an act of unlawful sexual
25 intercourse with a minor who is not more than three years older
26 or three years younger than the perpetrator, is guilty of a
27 misdemeanor.

28 (c) Any person who engages in an act of unlawful sexual
29 intercourse with a minor who is more than three years younger
30 than the perpetrator is guilty of either a misdemeanor or a felony,
31 and shall be punished by imprisonment in a county jail not
32 exceeding one year, or by imprisonment ~~in the state prison pursuant~~
33 *to subdivision (h) of Section 1170*.

34 (d) Any person 21 years of age or older who engages in an act
35 of unlawful sexual intercourse with a minor who is under 16 years
36 of age is guilty of either a misdemeanor or a felony, and shall be
37 punished by imprisonment in a county jail not exceeding one year,
38 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
39 *of Section 1170* for two, three, or four years.

1 (e) (1) Notwithstanding any other provision of this section, an
2 adult who engages in an act of sexual intercourse with a minor in
3 violation of this section may be liable for civil penalties in the
4 following amounts:

5 (A) An adult who engages in an act of unlawful sexual
6 intercourse with a minor less than two years younger than the adult
7 is liable for a civil penalty not to exceed two thousand dollars
8 (\$2,000).

9 (B) An adult who engages in an act of unlawful sexual
10 intercourse with a minor at least two years younger than the adult
11 is liable for a civil penalty not to exceed five thousand dollars
12 (\$5,000).

13 (C) An adult who engages in an act of unlawful sexual
14 intercourse with a minor at least three years younger than the adult
15 is liable for a civil penalty not to exceed ten thousand dollars
16 (\$10,000).

17 (D) An adult over the age of 21 years who engages in an act of
18 unlawful sexual intercourse with a minor under 16 years of age is
19 liable for a civil penalty not to exceed twenty-five thousand dollars
20 (\$25,000).

21 (2) The district attorney may bring actions to recover civil
22 penalties pursuant to this subdivision. From the amounts collected
23 for each case, an amount equal to the costs of pursuing the action
24 shall be deposited with the treasurer of the county in which the
25 judgment was entered, and the remainder shall be deposited in the
26 Underage Pregnancy Prevention Fund, which is hereby created in
27 the State Treasury. Amounts deposited in the Underage Pregnancy
28 Prevention Fund may be used only for the purpose of preventing
29 underage pregnancy upon appropriation by the Legislature.

30 (3) In addition to any punishment imposed under this section,
31 the judge may assess a fine not to exceed seventy dollars (\$70)
32 against any person who violates this section with the proceeds of
33 this fine to be used in accordance with Section 1463.23. The court
34 shall, however, take into consideration the defendant's ability to
35 pay, and no defendant shall be denied probation because of his or
36 her inability to pay the fine permitted under this subdivision.

37 *SEC. 303. Section 265 of the Penal Code is amended to read:*

38 265. Every person who takes any woman unlawfully, against
39 her will, and by force, menace or duress, compels her to marry
40 him, or to marry any other person, or to be defiled, is punishable

1 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
2 Section 1170.

3 SEC. 304. Section 266b of the Penal Code is amended to read:

4 266b. Every person who takes any other person unlawfully,
5 and against his or her will, and by force, menace, or duress,
6 compels him or her to live with such person in an illicit relation,
7 against his or her consent, or to so live with any other person, is
8 punishable by imprisonment ~~in the state prison~~ pursuant to
9 subdivision (h) of Section 1170.

10 SEC. 304.5. Section 266e of the Penal Code is amended to
11 read:

12 266e. Every person who purchases, or pays any money or other
13 valuable thing for, any person for the purpose of prostitution as
14 defined in subdivision (b) of Section 647, or for the purpose of
15 placing such person, for immoral purposes, in any house or place
16 against his or her will, is guilty of a felony punishable by
17 imprisonment in the state prison for 16 months, or 2 or 3 years.

18 SEC. 304.7. Section 266f of the Penal Code is amended to
19 read:

20 266f. Every person who sells any person or receives any money
21 or other valuable thing for or on account of his or her placing in
22 custody, for immoral purposes, any person, whether with or without
23 his or her consent, is guilty of a felony punishable by imprisonment
24 in the state prison for 16 months, or 2 or 3 years.

25 SEC. 305. Section 266g of the Penal Code is amended to read:

26 266g. Every man who, by force, intimidation, threats,
27 persuasion, promises, or any other means, places or leaves, or
28 procures any other person or persons to place or leave, his wife in
29 a house of prostitution, or connives at or consents to, or permits,
30 the placing or leaving of his wife in a house of prostitution, or
31 allows or permits her to remain therein, is guilty of a felony and
32 punishable by imprisonment ~~in the state prison~~ pursuant to
33 subdivision (h) of Section 1170 for two, three or four years; and
34 in all prosecutions under this section a wife is a competent witness
35 against her husband.

36 SEC. 306. Section 271 of the Penal Code is amended to read:

37 271. Every parent of any child under the age of 14 years, and
38 every person to whom any such child has been confided for nurture,
39 or education, who deserts such child in any place whatever with
40 intent to abandon it, is punishable by imprisonment ~~in the state~~

1 ~~prison pursuant to subdivision (h) of Section 1170~~ or in the county
2 jail not exceeding one year or by fine not exceeding one thousand
3 dollars (\$1,000) or by both.

4 *SEC. 307. Section 271a of the Penal Code is amended to read:*

5 271a. Every person who knowingly and willfully abandons,
6 or who, having ability so to do, fails or refuses to maintain his or
7 her minor child under the age of 14 years, or who falsely, knowing
8 the same to be false, represents to any manager, officer or agent
9 of any orphan asylum or charitable institution for the care of
10 orphans, that any child for whose admission into ~~such~~ *that* asylum
11 or institution application has been made is an orphan, is punishable
12 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
13 *Section 1170*, or in the county jail not exceeding one year, or by
14 fine not exceeding one thousand dollars (\$1,000), or by both.

15 *SEC. 308. Section 273.4 of the Penal Code is amended to read:*

16 273.4. (a) If the act constituting a felony violation of
17 subdivision (a) of Section 273a was female genital mutilation, as
18 defined in subdivision (b), the defendant shall be punished by an
19 additional term of imprisonment ~~in the state prison pursuant to~~
20 *subdivision (h) of Section 1170* for one year, in addition and
21 consecutive to the punishment prescribed by Section 273a.

22 (b) "Female genital mutilation" means the excision or
23 infibulation of the labia majora, labia minora, clitoris, or vulva,
24 performed for nonmedical purposes.

25 (c) Nothing in this section shall preclude prosecution under
26 Section 203, 205, or 206 or any other provision of law.

27 *SEC. 309. Section 273.6 of the Penal Code, as amended by*
28 *Section 2 of Chapter 566 of the Statutes of 2009, is amended to*
29 *read:*

30 273.6. (a) Any intentional and knowing violation of a
31 protective order, as defined in Section 6218 of the Family Code,
32 or of an order issued pursuant to Section 527.6, 527.8, or 527.85
33 of the Code of Civil Procedure, or Section 15657.03 of the Welfare
34 and Institutions Code, is a misdemeanor punishable by a fine of
35 not more than one thousand dollars (\$1,000), or by imprisonment
36 in a county jail for not more than one year, or by both that fine and
37 imprisonment.

38 (b) In the event of a violation of subdivision (a) that results in
39 physical injury, the person shall be punished by a fine of not more
40 than two thousand dollars (\$2,000), or by imprisonment in a county

1 jail for not less than 30 days nor more than one year, or by both
2 that fine and imprisonment. However, if the person is imprisoned
3 in a county jail for at least 48 hours, the court may, in the interest
4 of justice and for reasons stated on the record, reduce or eliminate
5 the 30-day minimum imprisonment required by this subdivision.
6 In determining whether to reduce or eliminate the minimum
7 imprisonment pursuant to this subdivision, the court shall consider
8 the seriousness of the facts before the court, whether there are
9 additional allegations of a violation of the order during the
10 pendency of the case before the court, the probability of future
11 violations, the safety of the victim, and whether the defendant has
12 successfully completed or is making progress with counseling.

13 (c) Subdivisions (a) and (b) shall apply to the following court
14 orders:

15 (1) Any order issued pursuant to Section 6320 or 6389 of the
16 Family Code.

17 (2) An order excluding one party from the family dwelling or
18 from the dwelling of the other.

19 (3) An order enjoining a party from specified behavior that the
20 court determined was necessary to effectuate the order described
21 in subdivision (a).

22 (4) Any order issued by another state that is recognized under
23 Part 5 (commencing with Section 6400) of Division 10 of the
24 Family Code.

25 (d) A subsequent conviction for a violation of an order described
26 in subdivision (a), occurring within seven years of a prior
27 conviction for a violation of an order described in subdivision (a)
28 and involving an act of violence or “a credible threat” of violence,
29 as defined in subdivision (c) of Section 139, is punishable by
30 imprisonment in a county jail not to exceed one year, or ~~in the~~
31 ~~state prison pursuant to subdivision (h) of Section 1170.~~

32 (e) In the event of a subsequent conviction for a violation of an
33 order described in subdivision (a) for an act occurring within one
34 year of a prior conviction for a violation of an order described in
35 subdivision (a) that results in physical injury to a victim, the person
36 shall be punished by a fine of not more than two thousand dollars
37 (\$2,000), or by imprisonment in a county jail for not less than six
38 months nor more than one year, by both that fine and
39 imprisonment, or by imprisonment ~~in the state prison pursuant to~~
40 ~~subdivision (h) of Section 1170.~~ However, if the person is

1 imprisoned in a county jail for at least 30 days, the court may, in
2 the interest of justice and for reasons stated in the record, reduce
3 or eliminate the six-month minimum imprisonment required by
4 this subdivision. In determining whether to reduce or eliminate
5 the minimum imprisonment pursuant to this subdivision, the court
6 shall consider the seriousness of the facts before the court, whether
7 there are additional allegations of a violation of the order during
8 the pendency of the case before the court, the probability of future
9 violations, the safety of the victim, and whether the defendant has
10 successfully completed or is making progress with counseling.

11 (f) The prosecuting agency of each county shall have the primary
12 responsibility for the enforcement of orders described in
13 subdivisions (a), (b), (d), and (e).

14 (g) (1) Every person who owns, possesses, purchases, or
15 receives a firearm knowing he or she is prohibited from doing so
16 by the provisions of a protective order as defined in Section 136.2
17 of this code, Section 6218 of the Family Code, or Section 527.6
18 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of
19 the Welfare and Institutions Code, shall be punished under
20 subdivision (g) of Section 12021.

21 (2) Every person subject to a protective order described in
22 paragraph (1) shall not be prosecuted under this section for owning,
23 possessing, purchasing, or receiving a firearm to the extent that
24 firearm is granted an exemption pursuant to subdivision (f) of
25 Section 527.9 of the Code of Civil Procedure, or subdivision (h)
26 of Section 6389 of the Family Code.

27 (h) If probation is granted upon conviction of a violation of
28 subdivision (a), (b), (c), (d), or (e), the court shall impose probation
29 consistent with Section 1203.097, and the conditions of probation
30 may include, in lieu of a fine, one or both of the following
31 requirements:

32 (1) That the defendant make payments to a battered women's
33 shelter or to a shelter for abused elder persons or dependent adults,
34 up to a maximum of five thousand dollars (\$5,000), pursuant to
35 Section 1203.097.

36 (2) That the defendant reimburse the victim for reasonable costs
37 of counseling and other reasonable expenses that the court finds
38 are the direct result of the defendant's offense.

39 (i) For any order to pay a fine, make payments to a battered
40 women's shelter, or pay restitution as a condition of probation

1 under subdivision (e), the court shall make a determination of the
2 defendant's ability to pay. In no event shall any order to make
3 payments to a battered women's shelter be made if it would impair
4 the ability of the defendant to pay direct restitution to the victim
5 or court-ordered child support. Where the injury to a married person
6 is caused in whole or in part by the criminal acts of his or her
7 spouse in violation of this section, the community property may
8 not be used to discharge the liability of the offending spouse for
9 restitution to the injured spouse, required by Section 1203.04, as
10 operative on or before August 2, 1995, or Section 1202.4, or to a
11 shelter for costs with regard to the injured spouse and dependents,
12 required by this section, until all separate property of the offending
13 spouse is exhausted.

14 *SEC. 310. Section 273.6 of the Penal Code, as amended by*
15 *Section 55 of Chapter 178 of the Statutes of 2010, is amended to*
16 *read:*

17 273.6. (a) Any intentional and knowing violation of a
18 protective order, as defined in Section 6218 of the Family Code,
19 or of an order issued pursuant to Section 527.6, 527.8, or 527.85
20 of the Code of Civil Procedure, or Section 15657.03 of the Welfare
21 and Institutions Code, is a misdemeanor punishable by a fine of
22 not more than one thousand dollars (\$1,000), or by imprisonment
23 in a county jail for not more than one year, or by both that fine and
24 imprisonment.

25 (b) In the event of a violation of subdivision (a) that results in
26 physical injury, the person shall be punished by a fine of not more
27 than two thousand dollars (\$2,000), or by imprisonment in a county
28 jail for not less than 30 days nor more than one year, or by both
29 that fine and imprisonment. However, if the person is imprisoned
30 in a county jail for at least 48 hours, the court may, in the interest
31 of justice and for reasons stated on the record, reduce or eliminate
32 the 30-day minimum imprisonment required by this subdivision.
33 In determining whether to reduce or eliminate the minimum
34 imprisonment pursuant to this subdivision, the court shall consider
35 the seriousness of the facts before the court, whether there are
36 additional allegations of a violation of the order during the
37 pendency of the case before the court, the probability of future
38 violations, the safety of the victim, and whether the defendant has
39 successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or “a credible threat” of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170.~~ However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

1 (f) The prosecuting agency of each county shall have the primary
2 responsibility for the enforcement of orders described in
3 subdivisions (a), (b), (d), and (e).

4 (g) (1) Every person who owns, possesses, purchases, or
5 receives a firearm knowing he or she is prohibited from doing so
6 by the provisions of a protective order as defined in Section 136.2
7 of this code, Section 6218 of the Family Code, or Section 527.6
8 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of
9 the Welfare and Institutions Code, shall be punished under Section
10 29825.

11 (2) Every person subject to a protective order described in
12 paragraph (1) shall not be prosecuted under this section for owning,
13 possessing, purchasing, or receiving a firearm to the extent that
14 firearm is granted an exemption pursuant to subdivision (f) of
15 Section 527.9 of the Code of Civil Procedure, or subdivision (h)
16 of Section 6389 of the Family Code.

17 (h) If probation is granted upon conviction of a violation of
18 subdivision (a), (b), (c), (d), or (e), the court shall impose probation
19 consistent with Section 1203.097, and the conditions of probation
20 may include, in lieu of a fine, one or both of the following
21 requirements:

22 (1) That the defendant make payments to a battered women's
23 shelter or to a shelter for abused elder persons or dependent adults,
24 up to a maximum of five thousand dollars (\$5,000), pursuant to
25 Section 1203.097.

26 (2) That the defendant reimburse the victim for reasonable costs
27 of counseling and other reasonable expenses that the court finds
28 are the direct result of the defendant's offense.

29 (i) For any order to pay a fine, make payments to a battered
30 women's shelter, or pay restitution as a condition of probation
31 under subdivision (e), the court shall make a determination of the
32 defendant's ability to pay. In no event shall any order to make
33 payments to a battered women's shelter be made if it would impair
34 the ability of the defendant to pay direct restitution to the victim
35 or court-ordered child support. Where the injury to a married person
36 is caused in whole or in part by the criminal acts of his or her
37 spouse in violation of this section, the community property may
38 not be used to discharge the liability of the offending spouse for
39 restitution to the injured spouse, required by Section 1203.04, as
40 operative on or before August 2, 1995, or Section 1202.4, or to a

1 shelter for costs with regard to the injured spouse and dependents,
2 required by this section, until all separate property of the offending
3 spouse is exhausted.

4 *SEC. 311. Section 273.65 of the Penal Code is amended to*
5 *read:*

6 273.65. (a) Any intentional and knowing violation of a
7 protective order issued pursuant to Section 213.5, 304, or 362.4
8 of the Welfare and Institutions Code is a misdemeanor punishable
9 by a fine of not more than one thousand dollars (\$1,000), or by
10 imprisonment in a county jail for not more than one year, or by
11 both the fine and imprisonment.

12 (b) In the event of a violation of subdivision (a) which results
13 in physical injury, the person shall be punished by a fine of not
14 more than two thousand dollars (\$2,000), or by imprisonment in
15 a county jail for not less than 30 days nor more than one year, or
16 by both the fine and imprisonment. However, if the person is
17 imprisoned in a county jail for at least 48 hours, the court may, in
18 the interests of justice and for reasons stated on the record, reduce
19 or eliminate the 30-day minimum imprisonment required by this
20 subdivision. In determining whether to reduce or eliminate the
21 minimum imprisonment pursuant to this subdivision, the court
22 shall consider the seriousness of the facts before the court, whether
23 there are additional allegations of a violation of the order during
24 the pendency of the case before the court, the probability of future
25 violations, the safety of the victim, and whether the defendant has
26 successfully completed or is making progress with counseling.

27 (c) Subdivisions (a) and (b) shall apply to the following court
28 orders:

29 (1) An order enjoining any party from molesting, attacking,
30 striking, threatening, sexually assaulting, battering, harassing,
31 contacting repeatedly by mail with the intent to harass, or
32 disturbing the peace of the other party, or other named family and
33 household members.

34 (2) An order excluding one party from the family dwelling or
35 from the dwelling of the other.

36 (3) An order enjoining a party from specified behavior which
37 the court determined was necessary to effectuate the order under
38 subdivision (a).

39 (d) A subsequent conviction for a violation of an order described
40 in subdivision (a), occurring within seven years of a prior

1 conviction for a violation of an order described in subdivision (a)
2 and involving an act of violence or “a credible threat” of violence,
3 as defined in subdivision (c) of Section 139, is punishable by
4 imprisonment in a county jail not to exceed one year, or ~~in the~~
5 ~~state prison pursuant to subdivision (h) of Section 1170.~~

6 (e) In the event of a subsequent conviction for a violation of an
7 order described in subdivision (a) for an act occurring within one
8 year of a prior conviction for a violation of an order described in
9 subdivision (a) which results in physical injury to the same victim,
10 the person shall be punished by a fine of not more than two
11 thousand dollars (\$2,000), or by imprisonment in a county jail for
12 not less than six months nor more than one year, by both that fine
13 and imprisonment, or by imprisonment ~~in the state prison pursuant~~
14 ~~to subdivision (h) of Section 1170.~~ However, if the person is
15 imprisoned in a county jail for at least 30 days, the court may, in
16 the interests of justice and for reasons stated in the record, reduce
17 or eliminate the six-month minimum imprisonment required by
18 this subdivision. In determining whether to reduce or eliminate
19 the minimum imprisonment pursuant to this subdivision, the court
20 shall consider the seriousness of the facts before the court, whether
21 there are additional allegations of a violation of the order during
22 the pendency of the case before the court, the probability of future
23 violations, the safety of the victim, and whether the defendant has
24 successfully completed or is making progress with counseling.

25 (f) The prosecuting agency of each county shall have the primary
26 responsibility for the enforcement of orders issued pursuant to
27 subdivisions (a), (b), (d), and (e).

28 (g) The court may order a person convicted under this section
29 to undergo counseling, and, if appropriate, to complete a batterer’s
30 treatment program.

31 (h) If probation is granted upon conviction of a violation of
32 subdivision (a), (b), or (c), the conditions of probation may include,
33 in lieu of a fine, one or both of the following requirements:

34 (1) That the defendant make payments to a battered women’s
35 shelter, up to a maximum of five thousand dollars (\$5,000),
36 pursuant to Section 1203.097.

37 (2) That the defendant reimburse the victim for reasonable costs
38 of counseling and other reasonable expenses that the court finds
39 are the direct result of the defendant’s offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court ordered child support.

SEC. 312. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both ~~prison custody~~ and the commission of an offense that results in a felony conviction *and prison custody or custody for more than one year in a county jail.*

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term

1 provided in subdivision (a) of Section 1203.1. If the court finds
2 that the defendant does not have the ability to pay the fees based
3 on the defendant's changed circumstances, the court may reduce
4 or waive the fees.

5 (4) If the offense was committed while the defendant was under
6 the influence of drugs or alcohol, the defendant shall abstain from
7 the use of drugs or alcohol during the period of probation and shall
8 be subject to random drug testing by his or her probation officer.

9 (5) The court may waive any of the above minimum conditions
10 of probation upon a finding that the condition would not be in the
11 best interests of justice. The court shall state on the record its
12 reasons for any waiver.

13 *SEC. 313. Section 278 of the Penal Code is amended to read:*

14 278. Every person, not having a right to custody, who
15 maliciously takes, entices away, keeps, withholds, or conceals any
16 child with the intent to detain or conceal that child from a lawful
17 custodian shall be punished by imprisonment in a county jail not
18 exceeding one year, a fine not exceeding one thousand dollars
19 (\$1,000), or both that fine and imprisonment, or by imprisonment
20 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
21 two, three, or four years, a fine not exceeding ten thousand dollars
22 (\$10,000), or both that fine and imprisonment.

23 *SEC. 314. Section 278.5 of the Penal Code is amended to read:*

24 278.5. (a) Every person who takes, entices away, keeps,
25 withholds, or conceals a child and maliciously deprives a lawful
26 custodian of a right to custody, or a person of a right to visitation,
27 shall be punished by imprisonment in a county jail not exceeding
28 one year, a fine not exceeding one thousand dollars (\$1,000), or
29 both that fine and imprisonment, or by imprisonment ~~in the state~~
30 ~~prison pursuant to subdivision (h) of Section 1170~~ for 16 months,
31 or two or three years, a fine not exceeding ten thousand dollars
32 (\$10,000), or both that fine and imprisonment.

33 (b) Nothing contained in this section limits the court's contempt
34 power.

35 (c) A custody order obtained after the taking, enticing away,
36 keeping, withholding, or concealing of a child does not constitute
37 a defense to a crime charged under this section.

38 *SEC. 315. Section 280 of the Penal Code is amended to read:*

1 280. Every person who willfully causes or permits the removal
2 or concealment of any child in violation of Section 8713, 8803, or
3 8910 of the Family Code shall be punished as follows:

4 (a) By imprisonment in a county jail for not more than one year
5 if the child is concealed within the county in which the adoption
6 proceeding is pending or in which the child has been placed for
7 adoption, or is removed from that county to a place within this
8 state.

9 (b) By imprisonment ~~in the state prison~~ *pursuant to subdivision*
10 *(h) of Section 1170*, or by imprisonment in a county jail for not
11 more than one year, if the child is removed from that county to a
12 place outside of this state.

13 *SEC. 316. Section 284 of the Penal Code is amended to read:*

14 284. Every person who knowingly and willfully marries the
15 husband or wife of another, in any case in which such husband or
16 wife would be punishable under the provisions of this chapter, is
17 punishable by fine not less than five thousand dollars (\$5,000), or
18 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
19 *Section 1170*.

20 *SEC. 317. Section 288.2 of the Penal Code is amended to read:*

21 288.2. (a) Every person who, with knowledge that a person is
22 a minor, or who fails to exercise reasonable care in ascertaining
23 the true age of a minor, knowingly distributes, sends, causes to be
24 sent, exhibits, or offers to distribute or exhibit by any means,
25 including, but not limited to, live or recorded telephone messages,
26 any harmful matter, as defined in Section 313, to a minor with the
27 intent of arousing, appealing to, or gratifying the lust or passions
28 or sexual desires of that person or of a minor, and with the intent
29 or for the purpose of seducing a minor, is guilty of a public offense
30 and shall be punished by imprisonment ~~in the state prison~~ *pursuant*
31 *to subdivision (h) of Section 1170* or in a county jail.

32 A person convicted of a second and any subsequent conviction
33 for a violation of this section is guilty of a felony.

34 (b) Every person who, with knowledge that a person is a minor,
35 knowingly distributes, sends, causes to be sent, exhibits, or offers
36 to distribute or exhibit by electronic mail, the Internet, as defined
37 in Section 17538 of the Business and Professions Code, or a
38 commercial online service, any harmful matter, as defined in
39 Section 313, to a minor with the intent of arousing, appealing to,
40 or gratifying the lust or passions or sexual desires of that person

1 or of a minor, and with the intent, or for the purpose of seducing
2 a minor, is guilty of a public offense and shall be punished by
3 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
4 Section 1170 or in a county jail.

5 A person convicted of a second and any subsequent conviction
6 for a violation of this section is guilty of a felony punishable by
7 imprisonment pursuant to subdivision (h) of Section 1170.

8 (c) It shall be a defense to any prosecution under this section
9 that a parent or guardian committed the act charged in aid of
10 legitimate sex education.

11 (d) It shall be a defense in any prosecution under this section
12 that the act charged was committed in aid of legitimate scientific
13 or educational purposes.

14 (e) It does not constitute a violation of this section for a
15 telephone corporation, as defined in Section 234 of the Public
16 Utilities Code, a cable television company franchised pursuant to
17 Section 53066 of the Government Code, or any of its affiliates, an
18 Internet service provider, or commercial online service provider,
19 to carry, broadcast, or transmit messages described in this section
20 or perform related activities in providing telephone, cable
21 television, Internet, or commercial online services.

22 SEC. 318. Section 290.018 of the Penal Code is amended to
23 read:

24 290.018. (a) Any person who is required to register under the
25 Act based on a misdemeanor conviction or juvenile adjudication
26 who willfully violates any requirement of the Act is guilty of a
27 misdemeanor punishable by imprisonment in a county jail not
28 exceeding one year.

29 (b) Except as provided in subdivisions (f), (h), and (j), any
30 person who is required to register under the Act based on a felony
31 conviction or juvenile adjudication who willfully violates any
32 requirement of the Act or who has a prior conviction or juvenile
33 adjudication for the offense of failing to register under the Act and
34 who subsequently and willfully violates any requirement of the
35 Act is guilty of a felony and shall be punished by imprisonment
36 ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for
37 16 months, or two or three years.

38 (c) If probation is granted or if the imposition or execution of
39 sentence is suspended, it shall be a condition of the probation or
40 suspension that the person serve at least 90 days in a county jail.

1 The penalty described in subdivision (b) or this subdivision shall
2 apply whether or not the person has been released on parole or has
3 been discharged from parole.

4 (d) Any person determined to be a mentally disordered sex
5 offender or who has been found guilty in the guilt phase of trial
6 for an offense for which registration is required under the Act, but
7 who has been found not guilty by reason of insanity in the sanity
8 phase of the trial, or who has had a petition sustained in a juvenile
9 adjudication for an offense for which registration is required
10 pursuant to Section 290.008, but who has been found not guilty
11 by reason of insanity, who willfully violates any requirement of
12 the Act is guilty of a misdemeanor and shall be punished by
13 imprisonment in a county jail not exceeding one year. For any
14 second or subsequent willful violation of any requirement of the
15 Act, the person is guilty of a felony and shall be punished by
16 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
17 *Section 1170* for 16 months, or two or three years.

18 (e) If, after discharge from parole, the person is convicted of a
19 felony or suffers a juvenile adjudication as specified in this act,
20 he or she shall be required to complete parole of at least one year,
21 in addition to any other punishment imposed under this section.
22 A person convicted of a felony as specified in this section may be
23 granted probation only in the unusual case where the interests of
24 justice would best be served. When probation is granted under this
25 act, the court shall specify on the record and shall enter into the
26 minutes the circumstances indicating that the interests of justice
27 would best be served by the disposition.

28 (f) Any person who has ever been adjudicated a sexually violent
29 predator, as defined in Section 6600 of the Welfare and Institutions
30 Code, and who fails to verify his or her registration every 90 days
31 as required pursuant to subdivision (b) of Section 290.012, shall
32 be punished by imprisonment ~~in the state prison~~ *pursuant to*
33 *subdivision (h) of Section 1170*, or in a county jail not exceeding
34 one year.

35 (g) Except as otherwise provided in subdivision (f), any person
36 who is required to register or reregister pursuant to Section 290.011
37 and willfully fails to comply with the requirement that he or she
38 reregister no less than every 30 days is guilty of a misdemeanor
39 and shall be punished by imprisonment in a county jail for at least
40 30 days, but not exceeding six months. A person who willfully

1 fails to comply with the requirement that he or she reregister no
2 less than every 30 days shall not be charged with this violation
3 more often than once for a failure to register in any period of 90
4 days. Any person who willfully commits a third or subsequent
5 violation of the requirements of Section 290.011 that he or she
6 reregister no less than every 30 days shall be punished in
7 accordance with either subdivision (a) or (b).

8 (h) Any person who fails to provide proof of residence as
9 required by paragraph (5) of subdivision (a) of Section 290.015,
10 regardless of the offense upon which the duty to register is based,
11 is guilty of a misdemeanor punishable by imprisonment in a county
12 jail not exceeding six months.

13 (i) Any person who is required to register under the Act who
14 willfully violates any requirement of the Act is guilty of a
15 continuing offense as to each requirement he or she violated.

16 (j) In addition to any other penalty imposed under this section,
17 the failure to provide information required on registration and
18 reregistration forms of the Department of Justice, or the provision
19 of false information, is a crime punishable by imprisonment in a
20 county jail for a period not exceeding one year. Nothing in this
21 subdivision shall be construed to limit or prevent prosecution under
22 any applicable provision of law.

23 (k) Whenever any person is released on parole or probation and
24 is required to register under the Act but fails to do so within the
25 time prescribed, the parole authority or the court, as the case may
26 be, shall order the parole or probation of the person revoked. For
27 purposes of this subdivision, “parole authority” has the same
28 meaning as described in Section 3000.

29 *SEC. 319. Section 290.4 of the Penal Code is amended to read:*

30 290.4. (a) The department shall operate a service through
31 which members of the public may provide a list of at least six
32 persons on a form approved by the Department of Justice and
33 inquire whether any of those persons is required to register as a
34 sex offender and is subject to public notification. The Department
35 of Justice shall respond with information on any person as to whom
36 information may be available to the public via the Internet Web
37 site as provided in Section 290.46, to the extent that information
38 may be disclosed pursuant to Section 290.46. The Department of
39 Justice may establish a fee for requests, including all actual and
40 reasonable costs associated with the service.

1 (b) The income from the operation of the service specified in
2 subdivision (a) shall be deposited in the Sexual Predator Public
3 Information Account within the Department of Justice for the
4 purpose of the implementation of this section by the Department
5 of Justice.

6 The moneys in the account shall consist of income from the
7 operation of the service authorized by subdivision (a), and any
8 other funds made available to the account by the Legislature.
9 Moneys in the account shall be available to the Department of
10 Justice upon appropriation by the Legislature for the purpose
11 specified in subdivision (a).

12 (c) (1) Any person who uses information disclosed pursuant to
13 this section to commit a felony shall be punished, in addition and
14 consecutive to, any other punishment, by a five-year term of
15 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
16 *Section 1170.*

17 (2) Any person who, without authorization, uses information
18 disclosed pursuant to this section to commit a misdemeanor shall
19 be subject to, in addition to any other penalty or fine imposed, a
20 fine of not less than five hundred dollars (\$500) and not more than
21 one thousand dollars (\$1,000).

22 (d) (1) A person is authorized to use information disclosed
23 pursuant to this section only to protect a person at risk.

24 (2) Except as authorized under paragraph (1) or any other
25 provision of law, use of any information that is disclosed pursuant
26 to this section for purposes relating to any of the following is
27 prohibited:

- 28 (A) Health insurance.
- 29 (B) Insurance.
- 30 (C) Loans.
- 31 (D) Credit.
- 32 (E) Employment.
- 33 (F) Education, scholarships, or fellowships.
- 34 (G) Housing or accommodations.
- 35 (H) Benefits, privileges, or services provided by any business
36 establishment.

37 (3) This section shall not affect authorized access to, or use of,
38 information pursuant to, among other provisions, Sections 11105
39 and 11105.3 of this code, Section 226.55 of the Civil Code,
40 Sections 777.5 and 14409.2 of the Financial Code, Sections

1 1522.01 and 1596.871 of the Health and Safety Code, and Section
2 432.7 of the Labor Code.

3 (4) (A) Any use of information disclosed pursuant to this section
4 for purposes other than those provided by paragraph (1) or in
5 violation of paragraph (2) shall make the user liable for the actual
6 damages, and any amount that may be determined by a jury or a
7 court sitting without a jury, not exceeding three times the amount
8 of actual damage, and not less than two hundred fifty dollars
9 (\$250), and attorney's fees, exemplary damages, or a civil penalty
10 not exceeding twenty-five thousand dollars (\$25,000).

11 (B) Whenever there is reasonable cause to believe that any
12 person or group of persons is engaged in a pattern or practice of
13 misuse of the service specified in subdivision (a), in violation of
14 paragraph (2), the Attorney General, any district attorney, or city
15 attorney, or any person aggrieved by the misuse of the service is
16 authorized to bring a civil action in the appropriate court requesting
17 preventive relief, including an application for a permanent or
18 temporary injunction, restraining order, or other order against the
19 person or group of persons responsible for the pattern or practice
20 of misuse. The foregoing remedies shall be independent of any
21 other remedies or procedures that may be available to an aggrieved
22 party under other provisions of law, including Part 2 (commencing
23 with Section 43) of Division 1 of the Civil Code.

24 (e) The Department of Justice and its employees shall be
25 immune from liability for good faith conduct under this section.

26 (f) The public notification provisions of this section are
27 applicable to every person described in subdivision (a), without
28 regard to when his or her crimes were committed or his or her duty
29 to register pursuant to Section 290 arose, and to every offense
30 subject to public notification pursuant to Section 290.46, regardless
31 of when it was committed.

32 *SEC. 320. Section 290.45 of the Penal Code is amended to*
33 *read:*

34 290.45. (a) (1) Notwithstanding any other provision of law,
35 and except as provided in paragraph (2), any designated law
36 enforcement entity may provide information to the public about a
37 person required to register as a sex offender pursuant to Section
38 290, by whatever means the entity deems appropriate, when
39 necessary to ensure the public safety based upon information
40 available to the entity concerning that specific person.

1 (2) The law enforcement entity shall include, with the disclosure,
2 a statement that the purpose of the release of information is to
3 allow members of the public to protect themselves and their
4 children from sex offenders.

5 (3) Community notification by way of an Internet Web site shall
6 be governed by Section 290.46, and a designated law enforcement
7 entity may not post on an Internet Web site any information
8 identifying an individual as a person required to register as a sex
9 offender except as provided in that section unless there is a warrant
10 outstanding for that person's arrest.

11 (b) Information that may be provided pursuant to subdivision
12 (a) may include, but is not limited to, the offender's name, known
13 aliases, gender, race, physical description, photograph, date of
14 birth, address, which shall be verified prior to publication,
15 description and license plate number of the offender's vehicles or
16 vehicles the offender is known to drive, type of victim targeted by
17 the offender, relevant parole or probation conditions, crimes
18 resulting in classification under this section, and date of release
19 from confinement, but excluding information that would identify
20 the victim.

21 (c) (1) The designated law enforcement entity may authorize
22 persons and entities who receive the information pursuant to this
23 section to disclose information to additional persons only if the
24 entity determines that disclosure to the additional persons will
25 enhance the public safety and identifies the appropriate scope of
26 further disclosure. A law enforcement entity may not authorize
27 any disclosure of this information by its placement on an Internet
28 Web site.

29 (2) A person who receives information from a law enforcement
30 entity pursuant to paragraph (1) may disclose that information only
31 in the manner and to the extent authorized by the law enforcement
32 entity.

33 (d) (1) A designated law enforcement entity and its employees
34 shall be immune from liability for good faith conduct under this
35 section.

36 (2) Any public or private educational institution, day care
37 facility, or any child care custodian described in Section 11165.7,
38 or any employee of a public or private educational institution or
39 day care facility which in good faith disseminates information as

1 authorized pursuant to subdivision (c) shall be immune from civil
2 liability.

3 (e) (1) Any person who uses information disclosed pursuant to
4 this section to commit a felony shall be punished, in addition and
5 consecutive to any other punishment, by a five-year term of
6 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
7 Section 1170.

8 (2) Any person who uses information disclosed pursuant to this
9 section to commit a misdemeanor shall be subject to, in addition
10 to any other penalty or fine imposed, a fine of not less than five
11 hundred dollars (\$500) and not more than one thousand dollars
12 (\$1,000).

13 (f) For purposes of this section, “designated law enforcement
14 entity” means the Department of Justice, every district attorney,
15 the Department of Corrections, the Department of the Youth
16 Authority, and every state or local agency expressly authorized by
17 statute to investigate or prosecute law violators.

18 (g) The public notification provisions of this section are
19 applicable to every person required to register pursuant to Section
20 290, without regard to when his or her crimes were committed or
21 his or her duty to register pursuant to Section 290 arose, and to
22 every offense described in Section 290, regardless of when it was
23 committed.

24 SEC. 321. Section 290.46 of the Penal Code is amended to
25 read:

26 290.46. (a) (1) On or before the dates specified in this section,
27 the Department of Justice shall make available information
28 concerning persons who are required to register pursuant to Section
29 290 to the public via an Internet Web site as specified in this
30 section. The department shall update the Internet Web site on an
31 ongoing basis. All information identifying the victim by name,
32 birth date, address, or relationship to the registrant shall be
33 excluded from the Internet Web site. The name or address of the
34 person’s employer and the listed person’s criminal history other
35 than the specific crimes for which the person is required to register
36 shall not be included on the Internet Web site. The Internet Web
37 site shall be translated into languages other than English as
38 determined by the department.

39 (2) (A) On or before July 1, 2010, the Department of Justice
40 shall make available to the public, via an Internet Web site as

1 specified in this section, as to any person described in subdivision
2 (b), (c), or (d), the following information:

3 (i) The year of conviction of his or her most recent offense
4 requiring registration pursuant to Section 290.

5 (ii) The year he or she was released from incarceration for that
6 offense.

7 (iii) Whether he or she was subsequently incarcerated for any
8 other felony, if that fact is reported to the department. If the
9 department has no information about a subsequent incarceration
10 for any felony, that fact shall be noted on the Internet Web site.

11 However, no year of conviction shall be made available to the
12 public unless the department also is able to make available the
13 corresponding year of release of incarceration for that offense, and
14 the required notation regarding any subsequent felony.

15 (B) (i) Any state facility that releases from incarceration a
16 person who was incarcerated because of a crime for which he or
17 she is required to register as a sex offender pursuant to Section
18 290 shall, within 30 days of release, provide the year of release
19 for his or her most recent offense requiring registration to the
20 Department of Justice in a manner and format approved by the
21 department.

22 (ii) Any state facility that releases a person who is required to
23 register pursuant to Section 290 from incarceration whose
24 incarceration was for a felony committed subsequently to the
25 offense for which he or she is required to register shall, within 30
26 days of release, advise the Department of Justice of that fact.

27 (iii) Any state facility that, prior to January 1, 2007, released
28 from incarceration a person who was incarcerated because of a
29 crime for which he or she is required to register as a sex offender
30 pursuant to Section 290 shall provide the year of release for his or
31 her most recent offense requiring registration to the Department
32 of Justice in a manner and format approved by the department.
33 The information provided by the Department of Corrections and
34 Rehabilitation shall be limited to information that is currently
35 maintained in an electronic format.

36 (iv) Any state facility that, prior to January 1, 2007, released a
37 person who is required to register pursuant to Section 290 from
38 incarceration whose incarceration was for a felony committed
39 subsequently to the offense for which he or she is required to
40 register shall advise the Department of Justice of that fact in a

1 manner and format approved by the department. The information
2 provided by the Department of Corrections and Rehabilitation
3 shall be limited to information that is currently maintained in an
4 electronic format.

5 (3) The State Department of Mental Health shall provide to the
6 Department of Justice Sex Offender Tracking Program the names
7 of all persons committed to its custody pursuant to Article 4
8 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
9 6 of the Welfare and Institutions Code, within 30 days of
10 commitment, and shall provide the names of all of those persons
11 released from its custody within five working days of release.

12 (b) (1) On or before July 1, 2005, with respect to a person who
13 has been convicted of the commission or the attempted commission
14 of any of the offenses listed in, or who is described in, paragraph
15 (2), the Department of Justice shall make available to the public
16 via the Internet Web site his or her name and known aliases, a
17 photograph, a physical description, including gender and race, date
18 of birth, criminal history, prior adjudication as a sexually violent
19 predator, the address at which the person resides, and any other
20 information that the Department of Justice deems relevant, but not
21 the information excluded pursuant to subdivision (a). On or before
22 January 1, 2013, the department shall make available to the public
23 via the Internet Web site his or her static SARATSO score and
24 information on an elevated risk level based on the SARATSO
25 future violence tool.

26 (2) This subdivision shall apply to the following offenses and
27 offenders:

28 (A) Section 187 committed in the perpetration, or an attempt to
29 perpetrate, rape or any act punishable under Section 286, 288,
30 288a, or 289.

31 (B) Section 207 committed with intent to violate Section 261,
32 286, 288, 288a, or 289.

33 (C) Section 209 committed with intent to violate Section 261,
34 286, 288, 288a, or 289.

35 (D) Paragraph (2) or (6) of subdivision (a) of Section 261.

36 (E) Section 264.1.

37 (F) Section 269.

38 (G) Subdivision (c) or (d) of Section 286.

39 (H) Subdivision (a), (b), or (c) of Section 288, provided that the
40 offense is a felony.

1 (I) Subdivision (c) or (d) of Section 288a.

2 (J) Section 288.3, provided that the offense is a felony.

3 (K) Section 288.4, provided that the offense is a felony.

4 (L) Section 288.5.

5 (M) Subdivision (a) or (j) of Section 289.

6 (N) Section 288.7.

7 (O) Any person who has ever been adjudicated a sexually violent
8 predator, as defined in Section 6600 of the Welfare and Institutions
9 Code.

10 (P) A felony violation of Section 311.1.

11 (Q) A felony violation of subdivision (b), (c), or (d) of Section
12 311.2.

13 (R) A felony violation of Section 311.3.

14 (S) A felony violation of subdivision (a), (b), or (c) of Section
15 311.4.

16 (T) Section 311.10.

17 (U) A felony violation of Section 311.11.

18 (c) (1) On or before July 1, 2005, with respect to a person who
19 has been convicted of the commission or the attempted commission
20 of any of the offenses listed in paragraph (2), the Department of
21 Justice shall make available to the public via the Internet Web site
22 his or her name and known aliases, a photograph, a physical
23 description, including gender and race, date of birth, criminal
24 history, the community of residence and ZIP Code in which the
25 person resides or the county in which the person is registered as a
26 transient, and any other information that the Department of Justice
27 deems relevant, but not the information excluded pursuant to
28 subdivision (a). On or before July 1, 2006, the Department of
29 Justice shall determine whether any person convicted of an offense
30 listed in paragraph (2) also has one or more prior or subsequent
31 convictions of an offense listed in subdivision (c) of Section 290,
32 and, for those persons, the Department of Justice shall make
33 available to the public via the Internet Web site the address at
34 which the person resides. However, the address at which the person
35 resides shall not be disclosed until a determination is made that
36 the person is, by virtue of his or her additional prior or subsequent
37 conviction of an offense listed in subdivision (c) of Section 290,
38 subject to this subdivision.

39 (2) This subdivision shall apply to the following offenses:

40 (A) Section 220, except assault to commit mayhem.

1 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

2 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
3 (i), of Section 286.

4 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
5 (i), of Section 288a.

6 (E) Subdivision (b), (d), (e), or (i) of Section 289.

7 (d) (1) On or before July 1, 2005, with respect to a person who
8 has been convicted of the commission or the attempted commission
9 of any of the offenses listed in, or who is described in, this
10 subdivision, the Department of Justice shall make available to the
11 public via the Internet Web site his or her name and known aliases,
12 a photograph, a physical description, including gender and race,
13 date of birth, criminal history, the community of residence and
14 ZIP Code in which the person resides or the county in which the
15 person is registered as a transient, and any other information that
16 the Department of Justice deems relevant, but not the information
17 excluded pursuant to subdivision (a) or the address at which the
18 person resides.

19 (2) This subdivision shall apply to the following offenses and
20 offenders:

21 (A) Subdivision (a) of Section 243.4, provided that the offense
22 is a felony.

23 (B) Section 266, provided that the offense is a felony.

24 (C) Section 266c, provided that the offense is a felony.

25 (D) Section 266j.

26 (E) Section 267.

27 (F) Subdivision (c) of Section 288, provided that the offense is
28 a misdemeanor.

29 (G) Section 288.3, provided that the offense is a misdemeanor.

30 (H) Section 288.4, provided that the offense is a misdemeanor.

31 (I) Section 626.81.

32 (J) Section 647.6.

33 (K) Section 653c.

34 (L) Any person required to register pursuant to Section 290
35 based upon an out-of-state conviction, unless that person is
36 excluded from the Internet Web site pursuant to subdivision (e).
37 However, if the Department of Justice has determined that the
38 out-of-state crime, if committed or attempted in this state, would
39 have been punishable in this state as a crime described in
40 subdivision (c) of Section 290, the person shall be placed on the

1 Internet Web site as provided in subdivision (b) or (c), as applicable
2 to the crime.

3 (e) (1) If a person has been convicted of the commission or the
4 attempted commission of any of the offenses listed in this
5 subdivision, and he or she has been convicted of no other offense
6 listed in subdivision (b), (c), or (d) other than those listed in this
7 subdivision, that person may file an application with the
8 Department of Justice, on a form approved by the department, for
9 exclusion from the Internet Web site. If the department determines
10 that the person meets the requirements of this subdivision, the
11 department shall grant the exclusion and no information concerning
12 the person shall be made available via the Internet Web site
13 described in this section. He or she bears the burden of proving
14 the facts that make him or her eligible for exclusion from the
15 Internet Web site. However, a person who has filed for or been
16 granted an exclusion from the Internet Web site is not relieved of
17 his or her duty to register as a sex offender pursuant to Section
18 290 nor from any otherwise applicable provision of law.

19 (2) This subdivision shall apply to the following offenses:

20 (A) A felony violation of subdivision (a) of Section 243.4.

21 (B) Section 647.6, if the offense is a misdemeanor.

22 (C) A felony violation of Section 311.1, subdivision (b), (c), or
23 (d) of Section 311.2, or Section 311.3, 311.4, 311.10, or 311.11 if
24 the person submits to the department a certified copy of a probation
25 report filed in court that clearly states that all victims involved in
26 the commission of the offense were at least 16 years of age or older
27 at the time of the commission of the offense.

28 (D) (i) An offense for which the offender successfully
29 completed probation, provided that the offender submits to the
30 department a certified copy of a probation report, presentencing
31 report, report prepared pursuant to Section 288.1, or other official
32 court document that clearly demonstrates that the offender was
33 the victim's parent, stepparent, sibling, or grandparent and that the
34 crime did not involve either oral copulation or penetration of the
35 vagina or rectum of either the victim or the offender by the penis
36 of the other or by any foreign object.

37 (ii) An offense for which the offender is on probation at the
38 time of his or her application, provided that the offender submits
39 to the department a certified copy of a probation report,
40 presentencing report, report prepared pursuant to Section 288.1,

1 or other official court document that clearly demonstrates that the
2 offender was the victim's parent, stepparent, sibling, or grandparent
3 and that the crime did not involve either oral copulation or
4 penetration of the vagina or rectum of either the victim or the
5 offender by the penis of the other or by any foreign object.

6 (iii) If, subsequent to his or her application, the offender commits
7 a violation of probation resulting in his or her incarceration in
8 county jail or state prison, his or her exclusion, or application for
9 exclusion, from the Internet Web site shall be terminated.

10 (iv) For the purposes of this subparagraph, "successfully
11 completed probation" means that during the period of probation
12 the offender neither received additional county jail or state prison
13 time for a violation of probation nor was convicted of another
14 offense resulting in a sentence to county jail or state prison.

15 (3) If the department determines that a person who was granted
16 an exclusion under a former version of this subdivision would not
17 qualify for an exclusion under the current version of this
18 subdivision, the department shall rescind the exclusion, make a
19 reasonable effort to provide notification to the person that the
20 exclusion has been rescinded, and, no sooner than 30 days after
21 notification is attempted, make information about the offender
22 available to the public on the Internet Web site as provided in this
23 section.

24 (4) Effective January 1, 2012, no person shall be excluded
25 pursuant to this subdivision unless the offender has submitted to
26 the department documentation sufficient for the department to
27 determine that he or she has a SARATSO risk level of low or
28 moderate-low.

29 (f) The Department of Justice shall make a reasonable effort to
30 provide notification to persons who have been convicted of the
31 commission or attempted commission of an offense specified in
32 subdivision (b), (c), or (d), that on or before July 1, 2005, the
33 department is required to make information about specified sex
34 offenders available to the public via an Internet Web site as
35 specified in this section. The Department of Justice shall also make
36 a reasonable effort to provide notice that some offenders are
37 eligible to apply for exclusion from the Internet Web site.

38 (g) (1) A designated law enforcement entity, as defined in
39 subdivision (f) of Section 290.45, may make available information
40 concerning persons who are required to register pursuant to Section

1 290 to the public via an Internet Web site as specified in paragraph
2 (2).

3 (2) The law enforcement entity may make available by way of
4 an Internet Web site the information described in subdivision (c)
5 if it determines that the public disclosure of the information about
6 a specific offender by way of the entity's Internet Web site is
7 necessary to ensure the public safety based upon information
8 available to the entity concerning that specific offender.

9 (3) The information that may be provided pursuant to this
10 subdivision may include the information specified in subdivision
11 (b) of Section 290.45. However, that offender's address may not
12 be disclosed unless he or she is a person whose address is on the
13 Department of Justice's Internet Web site pursuant to subdivision
14 (b) or (c).

15 (h) For purposes of this section, "offense" includes the statutory
16 predecessors of that offense, or any offense committed in another
17 jurisdiction that, if committed or attempted to be committed in this
18 state, would have been punishable in this state as an offense listed
19 in subdivision (c) of Section 290.

20 (i) Notwithstanding Section 6254.5 of the Government Code,
21 disclosure of information pursuant to this section is not a waiver
22 of exemptions under Chapter 3.5 (commencing with Section 6250)
23 of Title 1 of Division 7 of the Government Code and does not
24 affect other statutory restrictions on disclosure in other situations.

25 (j) (1) Any person who uses information disclosed pursuant to
26 this section to commit a misdemeanor shall be subject to, in
27 addition to any other penalty or fine imposed, a fine of not less
28 than ten thousand dollars (\$10,000) and not more than fifty
29 thousand dollars (\$50,000).

30 (2) Any person who uses information disclosed pursuant to this
31 section to commit a felony shall be punished, in addition and
32 consecutive to any other punishment, by a five-year term of
33 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
34 Section 1170.

35 (k) Any person who is required to register pursuant to Section
36 290 who enters an Internet Web site established pursuant to this
37 section shall be punished by a fine not exceeding one thousand
38 dollars (\$1,000), imprisonment in a county jail for a period not to
39 exceed six months, or by both that fine and imprisonment.

1 (l) (1) A person is authorized to use information disclosed
2 pursuant to this section only to protect a person at risk.

3 (2) Except as authorized under paragraph (1) or any other
4 provision of law, use of any information that is disclosed pursuant
5 to this section for purposes relating to any of the following is
6 prohibited:

7 (A) Health insurance.

8 (B) Insurance.

9 (C) Loans.

10 (D) Credit.

11 (E) Employment.

12 (F) Education, scholarships, or fellowships.

13 (G) Housing or accommodations.

14 (H) Benefits, privileges, or services provided by any business
15 establishment.

16 (3) This section shall not affect authorized access to, or use of,
17 information pursuant to, among other provisions, Sections 11105
18 and 11105.3, Section 8808 of the Family Code, Sections 777.5
19 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871
20 of the Health and Safety Code, and Section 432.7 of the Labor
21 Code.

22 (4) (A) Any use of information disclosed pursuant to this section
23 for purposes other than those provided by paragraph (1) or in
24 violation of paragraph (2) shall make the user liable for the actual
25 damages, and any amount that may be determined by a jury or a
26 court sitting without a jury, not exceeding three times the amount
27 of actual damage, and not less than two hundred fifty dollars
28 (\$250), and attorney's fees, exemplary damages, or a civil penalty
29 not exceeding twenty-five thousand dollars (\$25,000).

30 (B) Whenever there is reasonable cause to believe that any
31 person or group of persons is engaged in a pattern or practice of
32 misuse of the information available via an Internet Web site
33 established pursuant to this section in violation of paragraph (2),
34 the Attorney General, any district attorney, or city attorney, or any
35 person aggrieved by the misuse is authorized to bring a civil action
36 in the appropriate court requesting preventive relief, including an
37 application for a permanent or temporary injunction, restraining
38 order, or other order against the person or group of persons
39 responsible for the pattern or practice of misuse. The foregoing
40 remedies shall be independent of any other remedies or procedures

1 that may be available to an aggrieved party under other provisions
2 of law, including Part 2 (commencing with Section 43) of Division
3 1 of the Civil Code.

4 (m) The public notification provisions of this section are
5 applicable to every person described in this section, without regard
6 to when his or her crimes were committed or his or her duty to
7 register pursuant to Section 290 arose, and to every offense
8 described in this section, regardless of when it was committed.

9 (n) A designated law enforcement entity and its employees shall
10 be immune from liability for good faith conduct under this section.

11 (o) The Attorney General, in collaboration with local law
12 enforcement and others knowledgeable about sex offenders, shall
13 develop strategies to assist members of the public in understanding
14 and using publicly available information about registered sex
15 offenders to further public safety. These strategies may include,
16 but are not limited to, a hotline for community inquiries,
17 neighborhood and business guidelines for how to respond to
18 information posted on this Internet Web site, and any other resource
19 that promotes public education about these offenders.

20 *SEC. 322. Section 298.2 of the Penal Code is amended to read:*

21 298.2. (a) Any person who is required to submit a specimen
22 sample or print impression pursuant to this chapter who engages
23 or attempts to engage in any of the following acts is guilty of a
24 felony punishable by imprisonment ~~in the state prison~~ pursuant to
25 *subdivision (h) of Section 1170* for two, three, or four years:

26 (1) Knowingly facilitates the collection of a wrongfully
27 attributed blood specimen, buccal swab sample, or thumb or palm
28 print impression, with the intent that a government agent or
29 employee be deceived as to the origin of a DNA profile or as to
30 any identification information associated with a specimen, sample,
31 or print impression required for submission pursuant to this chapter.

32 (2) Knowingly tampers with any specimen, sample, print, or
33 the collection container for any specimen or sample, with the intent
34 that any government agent or employee be deceived as to the
35 identity of the person to whom the specimen, sample, or print
36 relates.

37 *SEC. 323. Section 299.5 of the Penal Code is amended to read:*

38 299.5. (a) All DNA and forensic identification profiles and
39 other identification information retained by the Department of
40 Justice pursuant to this chapter are exempt from any law requiring

1 disclosure of information to the public and shall be confidential
2 except as otherwise provided in this chapter.

3 (b) All evidence and forensic samples containing biological
4 material retained by the Department of Justice DNA Laboratory
5 or other state law enforcement agency are exempt from any law
6 requiring disclosure of information to the public or the return of
7 biological specimens, samples, or print impressions.

8 (c) Non-DNA forensic identification information may be filed
9 with the offender's file maintained by the Sex Registration Unit
10 of the Department of Justice or in other computerized data bank
11 or database systems maintained by the Department of Justice.

12 (d) The DNA and other forensic identification information
13 retained by the Department of Justice pursuant to this chapter shall
14 not be included in the state summary criminal history information.
15 However, nothing in this chapter precludes law enforcement
16 personnel from entering into a person's criminal history
17 information or offender file maintained by the Department of
18 Justice, the fact that the specimens, samples, and print impressions
19 required by this chapter have or have not been collected from that
20 person.

21 (e) The fact that the blood specimens, saliva or buccal swab
22 samples, and print impressions required by this chapter have been
23 received by the DNA Laboratory of the Department of Justice shall
24 be included in the state summary criminal history information as
25 soon as administratively practicable.

26 The full palm prints of each hand shall be filed and maintained
27 by the Automated Latent Print Section of the Bureau of Criminal
28 Identification and Information of the Department of Justice, and
29 may be included in the state summary criminal history information.

30 (f) DNA samples and DNA profiles and other forensic
31 identification information shall be released only to law enforcement
32 agencies, including, but not limited to, parole officers of the
33 Department of Corrections, hearing officers of the parole authority,
34 probation officers, the Attorney General's office, district attorneys'
35 offices, and prosecuting city attorneys' offices, unless otherwise
36 specifically authorized by this chapter. Dissemination of DNA
37 specimens, samples, and DNA profiles and other forensic
38 identification information to law enforcement agencies and district
39 attorneys' offices outside this state shall be performed in
40 conformity with the provisions of this chapter.

1 (g) A defendant's DNA and other forensic identification
2 information developed pursuant to this chapter shall be available
3 to his or her defense counsel upon court order made pursuant to
4 Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

5 (h) Except as provided in subdivision (g) and in order to protect
6 the confidentiality and privacy of database and data bank
7 information, the Department of Justice and local public DNA
8 laboratories shall not otherwise be compelled in a criminal or civil
9 proceeding to provide any DNA profile or forensic identification
10 database or data bank information or its computer database program
11 software or structures to any person or party seeking such records
12 or information whether by subpoena or discovery, or other
13 procedural device or inquiry.

14 (i) (1) (A) Any person who knowingly uses an offender
15 specimen, sample, or DNA profile collected pursuant to this chapter
16 for other than criminal identification or exclusion purposes, or for
17 other than the identification of missing persons, or who knowingly
18 discloses DNA or other forensic identification information
19 developed pursuant to this section to an unauthorized individual
20 or agency, for other than criminal identification or exclusion
21 purposes, or for the identification of missing persons, in violation
22 of this chapter, shall be punished by imprisonment in a county jail
23 not exceeding one year or by imprisonment ~~in the state prison~~
24 *pursuant to subdivision (h) of Section 1170.*

25 (B) Any person who, for the purpose of financial gain,
26 knowingly uses a specimen, sample, or DNA profile collected
27 pursuant to this chapter for other than criminal identification or
28 exclusion purposes or for the identification of missing persons or
29 who, for the purpose of financial gain, knowingly discloses DNA
30 or other forensic identification information developed pursuant to
31 this section to an unauthorized individual or agency, for other than
32 criminal identification or exclusion purposes or for other than the
33 identification of missing persons, in violation of this chapter, shall,
34 in addition to the penalty provided in subparagraph (A), be
35 punished by a criminal fine in an amount three times that of any
36 financial gain received or ten thousand dollars (\$10,000),
37 whichever is greater.

38 (2) (A) If any employee of the Department of Justice knowingly
39 uses a specimen, sample, or DNA profile collected pursuant to this
40 chapter for other than criminal identification or exclusion purposes,

1 or knowingly discloses DNA or other forensic identification
2 information developed pursuant to this section to an unauthorized
3 individual or agency, for other than criminal identification or
4 exclusion purposes or for other than the identification of missing
5 persons, in violation of this chapter, the department shall be liable
6 in civil damages to the donor of the DNA identification information
7 in the amount of five thousand dollars (\$5,000) for each violation,
8 plus attorney's fees and costs. In the event of multiple disclosures,
9 the total damages available to the donor of the DNA is limited to
10 fifty thousand dollars (\$50,000) plus attorney's fees and costs.

11 (B) (i) Notwithstanding any other law, this shall be the sole
12 and exclusive remedy against the Department of Justice and its
13 employees available to the donor of the DNA.

14 (ii) The Department of Justice employee disclosing DNA
15 identification information in violation of this chapter shall be
16 absolutely immune from civil liability under this or any other law.

17 (3) It is not a violation of this section for a law enforcement
18 agency in its discretion to publicly disclose the fact of a DNA
19 profile match, or the name of the person identified by the DNA
20 match when this match is the basis of law enforcement's
21 investigation, arrest, or prosecution of a particular person, or the
22 identification of a missing or abducted person.

23 (j) It is not a violation of this chapter to furnish DNA or other
24 forensic identification information of the defendant to his or her
25 defense counsel for criminal defense purposes in compliance with
26 discovery.

27 (k) It is not a violation of this section for law enforcement to
28 release DNA and other forensic identification information
29 developed pursuant to this chapter to a jury or grand jury, or in a
30 document filed with a court or administrative agency, or as part
31 of a judicial or administrative proceeding, or for this information
32 to become part of the public transcript or record of proceedings
33 when, in the discretion of law enforcement, disclosure is necessary
34 because the DNA information pertains to the basis for law
35 enforcement's identification, arrest, investigation, prosecution, or
36 exclusion of a particular person related to the case.

37 (l) It is not a violation of this section to include information
38 obtained from a file in a transcript or record of a judicial
39 proceeding, or in any other public record when the inclusion of

1 the information in the public record is authorized by a court, statute,
2 or decisional law.

3 (m) It is not a violation of this section for the DNA Laboratory
4 of the Department of Justice, or an organization retained as an
5 agent of the Department of Justice, or a local public laboratory to
6 use anonymous records or criminal history information obtained
7 pursuant to this chapter for training, research, statistical analysis
8 of populations, or quality assurance or quality control.

9 (n) The Department of Justice shall make public the
10 methodology and procedures to be used in its DNA program prior
11 to the commencement of DNA testing in its laboratories. The
12 Department of Justice shall review and consider on an ongoing
13 basis the findings and results of any peer review and validation
14 studies submitted to the department by members of the relevant
15 scientific community experienced in the use of DNA technology.
16 This material shall be available to criminal defense counsel upon
17 court order made pursuant to Chapter 10 (commencing with Section
18 1054) of Title 6 of Part 2.

19 (o) In order to maintain the computer system security of the
20 Department of Justice DNA and Forensic Identification Database
21 and Data Bank Program, the computer software and database
22 structures used by the DNA Laboratory of the Department of
23 Justice to implement this chapter are confidential.

24 *SEC. 324. Section 311.9 of the Penal Code is amended to read:*

25 311.9. (a) Every person who violates subdivision (a) of Section
26 311.2 or Section 311.5 is punishable by fine of not more than one
27 thousand dollars (\$1,000) plus five dollars (\$5) for each additional
28 unit of material coming within the provisions of this chapter, which
29 is involved in the offense, not to exceed ten thousand dollars
30 (\$10,000), or by imprisonment in the county jail for not more than
31 six months plus one day for each additional unit of material coming
32 within the provisions of this chapter, and which is involved in the
33 offense, not to exceed a total of 360 days in the county jail, or by
34 both that fine and imprisonment. If that person has previously been
35 convicted of any offense in this chapter, or of a violation of Section
36 313.1, a violation of subdivision (a) of Section 311.2 or Section
37 311.5 is punishable as a felony *by imprisonment pursuant to*
38 *subdivision (h) of Section 1170.*

39 (b) Every person who violates subdivision (a) of Section 311.4
40 is punishable by fine of not more than two thousand dollars

1 (\$2,000) or by imprisonment in the county jail for not more than
2 one year, or by both that fine and imprisonment, or by
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170*. If that person has been previously convicted of a
5 violation of former Section 311.3 or Section 311.4 he or she is
6 punishable by imprisonment ~~in the state prison pursuant to~~
7 *subdivision (h) of Section 1170*.

8 (c) Every person who violates Section 311.7 is punishable by
9 fine of not more than one thousand dollars (\$1,000) or by
10 imprisonment in the county jail for not more than six months, or
11 by both that fine and imprisonment. For a second and subsequent
12 offense he or she shall be punished by a fine of not more than two
13 thousand dollars (\$2,000), or by imprisonment in the county jail
14 for not more than one year, or by both that fine and imprisonment.
15 If the person has been twice convicted of a violation of this chapter,
16 a violation of Section 311.7 is punishable as a felony *by*
17 *imprisonment pursuant to subdivision (h) of Section 1170*.

18 *SEC. 325. Section 313.4 of the Penal Code is amended to read:*

19 313.4. Every person who violates Section 313.1, other than
20 subdivision (e), is punishable by fine of not more than two thousand
21 dollars (\$2,000), by imprisonment in the county jail for not more
22 than one year, or by both that fine and imprisonment. However,
23 if the person has been previously convicted of a violation of Section
24 313.1, other than subdivision (e), or of any section of Chapter 7.5
25 (commencing with Section 311) of Title 9 of Part 1 of this code,
26 the person shall be punished by imprisonment ~~in the state prison~~
27 *pursuant to subdivision (h) of Section 1170*.

28 *SEC. 326. Section 337.3 of the Penal Code is amended to read:*

29 337.3. Any person who in the commission of touting falsely
30 uses the name of any official of the California Horse Racing Board,
31 its inspectors or attachés, or of any official of any race track
32 association, or the names of any owner, trainer, jockey or other
33 person licensed by the California Horse Racing Board as the source
34 of any information or purported information is guilty of a felony
35 and is punishable by a fine of not more than five thousand dollars
36 (\$5,000) or by imprisonment ~~in the state prison pursuant to~~
37 *subdivision (h) of Section 1170*, or by both ~~such~~ that fine and
38 imprisonment.

39 *SEC. 327. Section 337.7 of the Penal Code is amended to read:*

337.7. Any person other than the lawful holder thereof who has in his possession any credential or license issued by the California Horse Racing Board to licensees and any person who has a forged or simulated credential or license of said board in his possession, and who uses such credential or license for the purpose of misrepresentation, fraud or touting is guilty of a felony and shall be punished by a fine of five thousand dollars (\$5,000) or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170,~~ or by both ~~such~~ that fine and imprisonment. If he or she has previously been convicted of any offense under this chapter, he or she shall be imprisoned *pursuant to subdivision (h) of Section 1170.*

SEC. 328. *Section 337b of the Penal Code is amended to read:*

337b. Any person who gives, or offers or promises to give, or attempts to give or offer, any money, bribe, or thing of value, to any participant or player, or to any prospective participant or player, in any sporting event, contest, or exhibition of any kind whatsoever, except a wrestling exhibition as defined in Section 18626 of the Business and Professions Code, and specifically including, but without being limited to, such sporting events, contests, and exhibitions as baseball, football, basketball, boxing, horseracing, and wrestling matches, with the intention or understanding or agreement that such participant or player or such prospective participant or player shall not use his or her best efforts to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition that any other player, participant or team of players or participants shall thereby be assisted or enabled to win such sporting event, contest, or exhibition, or shall so conduct himself or herself in such sporting event, contest, or exhibition as to limit his or her or his or her team's margin of victory in such sporting event, contest, or exhibition, is guilty of a felony, and shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170,~~ or by a fine not exceeding five thousand dollars (\$5,000), or by both ~~such~~ that fine and imprisonment.

SEC. 329. *Section 337c of the Penal Code is amended to read:*

337c. Any person who accepts, or attempts to accept, or offers to accept, or agrees to accept, any money, bribe or thing of value, with the intention or understanding or agreement that he or she

1 will not use his or her best efforts to win any sporting event,
2 contest, or exhibition of any kind whatsoever, except a wrestling
3 exhibition as defined in Section 18626 of the Business and
4 Professions Code, and specifically including, but without being
5 limited to, such sporting events, contests, or exhibitions as baseball,
6 football, basketball, boxing, horseracing, and wrestling matches,
7 in which he or she is playing or participating or is about to play
8 or participate in, or will so conduct himself or herself in such
9 sporting event, contest, or exhibition that any other player or
10 participant or team of players or participants shall thereby be
11 assisted or enabled to win such sporting event, contest, or
12 exhibition, or will so conduct himself or herself in such sporting
13 event, contest, or exhibition as to limit his or her or his or her
14 team's margin of victory in such sporting event, contest, or
15 exhibition, is guilty of a felony, and shall be punished by
16 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
17 Section 1170, or by a fine not exceeding five thousand dollars
18 (\$5,000), or by both ~~such~~ that fine and imprisonment.

19 SEC. 330. Section 337d of the Penal Code is amended to read:

20 337d. Any person who gives, offers to give, promises to give,
21 or attempts to give, any money, bribe, or thing of value to any
22 person who is umpiring, managing, directing, refereeing,
23 supervising, judging, presiding, or officiating at, or who is about
24 to umpire, manage, direct, referee, supervise, judge, preside, or
25 officiate at any sporting event, contest, or exhibition of any kind
26 whatsoever, including, but not limited to, sporting events, contests,
27 and exhibitions such as baseball, football, boxing, horse racing,
28 and wrestling matches, with the intention or agreement or
29 understanding that the person shall corruptly or dishonestly umpire,
30 manage, direct, referee, supervise, judge, preside, or officiate at,
31 any sporting event, contest, or exhibition, or the players or
32 participants thereof, with the intention or purpose that the result
33 of the sporting event, contest, or exhibition will be affected or
34 influenced thereby, is guilty of a felony and shall be punished by
35 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
36 Section 1170 or by a fine of not more than ten thousand dollars
37 (\$10,000), or by imprisonment and fine. A second offense of this
38 section is a felony and shall be punished by imprisonment ~~in the~~
39 ~~state prison~~ pursuant to subdivision (h) of Section 1170 or by a

1 fine of not more than fifteen thousand dollars (\$15,000), or by
2 both *that* imprisonment and fine.

3 *SEC. 331. Section 337e of the Penal Code is amended to read:*

4 337e. Any person who as umpire, manager, director, referee,
5 supervisor, judge, presiding officer or official receives or agrees
6 to receive, or attempts to receive any money, bribe or thing of
7 value, with the understanding or agreement that such umpire,
8 manager, director, referee, supervisor, judge, presiding officer, or
9 official shall corruptly conduct himself or shall corruptly umpire,
10 manage, direct, referee, supervise, judge, preside, or officiate at,
11 any sporting event, contest, or exhibition of any kind whatsoever,
12 and specifically including, but without being limited to, such
13 sporting events, contests, and exhibitions as baseball, football,
14 boxing, horseracing, and wrestling matches, or any player or
15 participant thereof, with the intention or purpose that the result of
16 the sporting event, contest, or exhibition will be affected or
17 influenced thereby, is guilty of a felony and shall be punished by
18 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
19 *Section 1170*, or by a fine not exceeding five thousand dollars
20 (\$5,000), or by both ~~such~~ *that* fine and imprisonment.

21 *SEC. 332. Section 337f of the Penal Code is amended to read:*

22 337f. (a) Any person who does any of the following is
23 punishable by a fine not exceeding five thousand dollars (\$5,000),
24 or by imprisonment ~~in the state prison or in~~ a county jail not
25 exceeding one year, *or by imprisonment pursuant to subdivision*
26 *(h) of Section 1170*, or by both that fine and imprisonment:

27 (1) Influences, or induces, or conspires with, any owner, trainer,
28 jockey, groom, or other person associated with or interested in any
29 stable, horse, or race in which a horse participates, to affect the
30 result of that race by stimulating or depressing a horse through the
31 administration of any drug to that horse, or by the use of any
32 electrical device or any electrical equipment or by any mechanical
33 or other device not generally accepted as regulation racing
34 equipment, or so stimulates or depresses a horse.

35 (2) Knowingly enters any horse in any race within a period of
36 24 hours after any drug has been administered to that horse for the
37 purpose of increasing or retarding the speed of that horse.

38 (3) Willfully or unjustifiably enters or races any horse in any
39 running or trotting race under any name or designation other than
40 the name or designation assigned to that horse by and registered

1 with the Jockey Club or the United States Trotting Association or
2 willfully sets on foot, instigates, engages in or in any way furthers
3 any act by which any horse is entered or raced in any running or
4 trotting race under any name or designation other than the name
5 or designation duly assigned by and registered with the Jockey
6 Club or the United States Trotting Association.

7 (b) For purposes of this section, the term “drug” includes all
8 substances recognized as having the power of stimulating or
9 depressing the central nervous system, respiration, or blood
10 pressure of an animal, such as narcotics, hypnotics, benzedrine or
11 its derivatives, but shall not include recognized vitamins or
12 supplemental feeds approved by or in compliance with the rules
13 and regulations or policies of the California Horse Racing Board.

14 *SEC. 333. Section 350 of the Penal Code is amended to read:*

15 350. (a) Any person who willfully manufactures, intentionally
16 sells, or knowingly possesses for sale any counterfeit mark
17 registered with the Secretary of State or registered on the Principal
18 Register of the United States Patent and Trademark Office, shall,
19 upon conviction, be punishable as follows:

20 (1) When the offense involves less than 1,000 of the articles
21 described in this subdivision, with a total retail or fair market value
22 less than that required for grand theft as defined in Section 487,
23 and if the person is an individual, he or she shall be punished by
24 a fine of not more than ten thousand dollars (\$10,000), or by
25 imprisonment in a county jail for not more than one year, or by
26 both that fine and imprisonment; or, if the person is a business
27 entity, by a fine of not more than two hundred thousand dollars
28 (\$200,000).

29 (2) When the offense involves 1,000 or more of the articles
30 described in this subdivision, or has a total retail or fair market
31 value equal to or greater than that required for grand theft as
32 defined in Section 487, and if the person is an individual, he or
33 she shall be punished by imprisonment in a county jail not to
34 exceed one year, ~~or in the state prison pursuant to subdivision (h)~~
35 *of Section 1170* for 16 months, or two or three years, or by a fine
36 not to exceed five hundred thousand dollars (\$500,000), or by both
37 that imprisonment and fine; or, if the person is a business entity,
38 by a fine not to exceed one million dollars (\$1,000,000).

39 (b) Any person who has been convicted of a violation of either
40 paragraph (1) or (2) of subdivision (a) shall, upon a subsequent

conviction of paragraph (1) of subdivision (a), if the person is an individual, be punished by a fine of not more than one hundred thousand dollars (\$100,000), or by imprisonment in a county jail for not more than one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for 16 months, or two or three years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than four hundred thousand dollars (\$400,000).

(c) Any person who has been convicted of a violation of subdivision (a) and who, by virtue of the conduct that was the basis of the conviction, has directly and foreseeably caused death or great bodily injury to another through reliance on the counterfeited item for its intended purpose shall, if the person is an individual, be punished by a fine of not more than one hundred thousand dollars (\$100,000), or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or four years, or by both that fine and imprisonment; or, if the person is a business entity, by a fine of not more than four hundred thousand dollars (\$400,000).

(d) (1) Except as provided in paragraph (2), in any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, that were used in connection with, or were part of, any violation of this section.

(2) Upon request of any law enforcement agency and consent from the specific registrants, the court may consider a motion to have the items described in paragraph (1), not including recordings or audiovisual works as defined in Section 653w, donated to a nonprofit organization for the purpose of distributing the goods to persons living in poverty at no charge to the persons served by the organization.

(3) Forfeiture of the proceeds of the crime shall be subject to Chapter 9 (commencing with Section 186) of Title 7 of Part 1. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as

1 prescribed in Section 12804 of the Vehicle Code, and that is any
2 of the following:

3 (A) A community property asset of a person other than the
4 defendant.

5 (B) The sole class 3 or 4 vehicle available to the immediate
6 family of that person or of the defendant.

7 (C) Reasonably necessary to be retained by the defendant for
8 the purpose of lawfully earning a living, or for any other reasonable
9 and lawful purpose.

10 (e) For the purposes of this section, the following definitions
11 shall apply:

12 (1) When counterfeited but unassembled components of
13 computer software packages are recovered, including, but not
14 limited to, counterfeited computer diskettes, instruction manuals,
15 or licensing envelopes, the number of “articles” shall be equivalent
16 to the number of completed computer software packages that could
17 have been made from those components.

18 (2) “Business entity” includes, but is not limited to, a
19 corporation, limited liability company, or partnership. “Business
20 entity” does not include a sole proprietorship.

21 (3) “Counterfeit mark” means a spurious mark that is identical
22 with, or confusingly similar to, a registered mark and is used, or
23 intended to be used, on or in connection with the same type of
24 goods or services for which the genuine mark is registered. It is
25 not necessary for the mark to be displayed on the outside of an
26 article for there to be a violation. For articles containing digitally
27 stored information, it shall be sufficient to constitute a violation
28 if the counterfeit mark appears on a video display when the
29 information is retrieved from the article. The term “spurious mark”
30 includes genuine marks used on or in connection with spurious
31 articles and includes identical articles containing identical marks,
32 where the goods or marks were reproduced without authorization
33 of, or in excess of any authorization granted by, the registrant.
34 When counterfeited but unassembled components of any articles
35 described under subdivision (a) are recovered, including, but not
36 limited to, labels, patches, fabric, stickers, wrappers, badges,
37 emblems, medallions, charms, boxes, containers, cans, cases,
38 hangtags, documentation, or packaging, or any other components
39 of any type or nature that are designed, marketed, or otherwise
40 intended to be used on or in connection with any articles described

1 under subdivision (a), the number of “articles” shall be equivalent
2 to the number of completed articles that could have been made
3 from those components.

4 (4) “Knowingly possess” means that the person possessing an
5 article knew or had reason to believe that it was spurious, or that
6 it was used on or in connection with spurious articles, or that it
7 was reproduced without authorization of, or in excess of any
8 authorization granted by, the registrant.

9 (5) Notwithstanding Section 7, “person” includes, but is not
10 limited to, a business entity.

11 (6) “Registrant” means any person to whom the registration of
12 a mark is issued and that person’s legal representatives, successors,
13 or assigns.

14 (7) “Sale” includes resale.

15 (8) “Value” has the following meanings:

16 (A) When counterfeit items of computer software are
17 manufactured or possessed for sale, the “value” of those items
18 shall be equivalent to the retail price or fair market price of the
19 true items that are counterfeited.

20 (B) When counterfeited but unassembled components of
21 computer software packages or any other articles described under
22 subdivision (a) are recovered, including, but not limited to,
23 counterfeited digital disks, instruction manuals, licensing
24 envelopes, labels, patches, fabric, stickers, wrappers, badges,
25 emblems, medallions, charms, boxes, containers, cans, cases,
26 hangtags, documentation, or packaging, or any other components
27 of any type or nature that are designed, marketed, or otherwise
28 intended to be used on or in connection with any articles described
29 under subdivision (a), the “value” of those components shall be
30 equivalent to the retail price or fair market value of the number of
31 completed computer software packages or other completed articles
32 described under subdivision (a) that could have been made from
33 those components.

34 (C) “Retail or fair market value” of a counterfeit article means
35 a value equivalent to the retail price or fair market value, as of the
36 last day of the charged crime, of a completed similar genuine article
37 containing a genuine mark.

38 (f) This section shall not be enforced against any party who has
39 adopted and lawfully used the same or confusingly similar mark
40 in the rendition of like services or the manufacture or sale of like

1 goods in this state from a date prior to the earliest effective date
2 of registration of the service mark or trademark either with the
3 Secretary of State or on the Principle Register of the United States
4 Patent and Trademark Office.

5 (g) An owner, officer, employee, or agent who provides, rents,
6 leases, licenses, or sells real property upon which a violation of
7 subdivision (a) occurs shall not be subject to a criminal penalty
8 pursuant to this section, unless he or she sells, or possesses for
9 sale, articles bearing a counterfeit mark in violation of this section.
10 This subdivision shall not be construed to abrogate or limit any
11 civil rights or remedies for a trademark violation.

12 (h) This section shall not be enforced against any party who
13 engages in fair uses of a mark, as specified in Section 14247 of
14 the Business and Professions Code.

15 (i) When a person is convicted of an offense under this section,
16 the court shall order the person to pay restitution to the trademark
17 owner and any other victim of the offense pursuant to Section
18 1202.4.

19 *SEC. 334. Section 367f of the Penal Code is amended to read:*

20 367f. (a) Except as provided in subdivisions (d) and (e), it
21 shall be unlawful for any person to knowingly acquire, receive,
22 sell, promote the transfer of, or otherwise transfer any human
23 organ, for purposes of transplantation, for valuable consideration.

24 (b) Except as provided in subdivisions (d), (e), and (f), it shall
25 be unlawful to remove or transplant any human organ with the
26 knowledge that the organ has been acquired or will be transferred
27 or sold for valuable consideration in violation of subdivision (a).

28 (c) For purposes of this section, the following definitions apply:

29 (1) "Human organ" includes, but is not limited to, a human
30 kidney, liver, heart, lung, pancreas, or any other human organ or
31 nonrenewable or nonregenerative tissue except plasma and sperm.

32 (2) "Valuable consideration" means financial gain or advantage,
33 but does not include the reasonable costs associated with the
34 removal, storage, transportation, and transplantation of a human
35 organ, or reimbursement for those services, or the expenses of
36 travel, housing, and lost wages incurred by the donor of a human
37 organ in connection with the donation of the organ.

38 (d) No act respecting the nonsale donation of organs or other
39 nonsale conduct pursuant to or in the furtherance of the purposes
40 of the Uniform Anatomical Gift Act, Chapter 3.5 (commencing

1 with Section 7150) Part 1 of Division 7 of the Health and Safety
2 Code, including acts pursuant to anatomical gifts offered under
3 Section 12811 of the Vehicle Code, shall be made unlawful by
4 this section.

5 (e) This section shall not apply to the person from whom the
6 organ is removed, nor to the person who receives the transplant,
7 or those persons' next-of-kin who assisted in obtaining the organ
8 for purposes of transplantations.

9 (f) A licensed physician and surgeon who transplants a human
10 organ in violation of subdivision (b) shall not be criminally liable
11 under that subdivision if the act is performed under emergency
12 and life-threatening conditions.

13 (g) Any person who violates subdivision (a) or (b) shall be
14 punished by a fine not to exceed fifty thousand dollars (\$50,000),
15 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
16 *of Section 1170* for three, four, or five years, or by both *that fine*
17 *and imprisonment*.

18 *SEC. 335. Section 367g of the Penal Code is amended to read:*

19 367g. (a) It shall be unlawful for anyone to knowingly use
20 sperm, ova, or embryos in assisted reproduction technology, for
21 any purpose other than that indicated by the sperm, ova, or embryo
22 provider's signature on a written consent form.

23 (b) It shall be unlawful for anyone to knowingly implant sperm,
24 ova, or embryos, through the use of assisted reproduction
25 technology, into a recipient who is not the sperm, ova, or embryo
26 provider, without the signed written consent of the sperm, ova, or
27 embryo provider and recipient.

28 (c) Any person who violates this section shall be punished by
29 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
30 *Section 1170* for three, four, or five years, by a fine not to exceed
31 fifty thousand dollars (\$50,000), or by both that fine and
32 imprisonment.

33 (d) Written consent, for the purposes of this section, shall not
34 be required of men who donate sperm to a licensed tissue bank.

35 *SEC. 336. Section 368 of the Penal Code is amended to read:*

36 368. (a) The Legislature finds and declares that crimes against
37 elders and dependent adults are deserving of special consideration
38 and protection, not unlike the special protections provided for
39 minor children, because elders and dependent adults may be
40 confused, on various medications, mentally or physically impaired,

1 or incompetent, and therefore less able to protect themselves, to
2 understand or report criminal conduct, or to testify in court
3 proceedings on their own behalf.

4 (b) (1) Any person who knows or reasonably should know that
5 a person is an elder or dependent adult and who, under
6 circumstances or conditions likely to produce great bodily harm
7 or death, willfully causes or permits any elder or dependent adult
8 to suffer, or inflicts thereon unjustifiable physical pain or mental
9 suffering, or having the care or custody of any elder or dependent
10 adult, willfully causes or permits the person or health of the elder
11 or dependent adult to be injured, or willfully causes or permits the
12 elder or dependent adult to be placed in a situation in which his or
13 her person or health is endangered, is punishable by imprisonment
14 in a county jail not exceeding one year, or by a fine not to exceed
15 six thousand dollars (\$6,000), or by both that fine and
16 imprisonment, or by imprisonment in the state prison for two,
17 three, or four years.

18 (2) If in the commission of an offense described in paragraph
19 (1), the victim suffers great bodily injury, as defined in Section
20 12022.7, the defendant shall receive an additional term in the state
21 prison as follows:

22 (A) Three years if the victim is under 70 years of age.

23 (B) Five years if the victim is 70 years of age or older.

24 (3) If in the commission of an offense described in paragraph
25 (1), the defendant proximately causes the death of the victim, the
26 defendant shall receive an additional term in the state prison as
27 follows:

28 (A) Five years if the victim is under 70 years of age.

29 (B) Seven years if the victim is 70 years of age or older.

30 (c) Any person who knows or reasonably should know that a
31 person is an elder or dependent adult and who, under circumstances
32 or conditions other than those likely to produce great bodily harm
33 or death, willfully causes or permits any elder or dependent adult
34 to suffer, or inflicts thereon unjustifiable physical pain or mental
35 suffering, or having the care or custody of any elder or dependent
36 adult, willfully causes or permits the person or health of the elder
37 or dependent adult to be injured or willfully causes or permits the
38 elder or dependent adult to be placed in a situation in which his or
39 her person or health may be endangered, is guilty of a
40 misdemeanor. A second or subsequent violation of this subdivision

1 is punishable by a fine not to exceed two thousand dollars (\$2,000),
2 or by imprisonment in a county jail not to exceed one year, or by
3 both that fine and imprisonment.

4 (d) Any person who is not a caretaker who violates any provision
5 of law proscribing theft, embezzlement, forgery, or fraud, or who
6 violates Section 530.5 proscribing identity theft, with respect to
7 the property or personal identifying information of an elder or a
8 dependent adult, and who knows or reasonably should know that
9 the victim is an elder or a dependent adult, is punishable by
10 imprisonment in a county jail not exceeding one year, or ~~in the~~
11 ~~state prison pursuant to subdivision (h) of Section 1170~~ for two,
12 three, or four years, when the moneys, labor, goods, services, or
13 real or personal property taken or obtained is of a value exceeding
14 nine hundred fifty dollars (\$950); and by a fine not exceeding one
15 thousand dollars (\$1,000), by imprisonment in a county jail not
16 exceeding one year, or by both that fine and imprisonment, when
17 the moneys, labor, goods, services, or real or personal property
18 taken or obtained is of a value not exceeding nine hundred fifty
19 dollars (\$950).

20 (e) Any caretaker of an elder or a dependent adult who violates
21 any provision of law proscribing theft, embezzlement, forgery, or
22 fraud, or who violates Section 530.5 proscribing identity theft,
23 with respect to the property or personal identifying information of
24 that elder or dependent adult, is punishable by imprisonment in a
25 county jail not exceeding one year, or ~~in the state prison pursuant~~
26 ~~to subdivision (h) of Section 1170~~ for two, three, or four years
27 when the moneys, labor, goods, services, or real or personal
28 property taken or obtained is of a value exceeding nine hundred
29 fifty dollars (\$950), and by a fine not exceeding one thousand
30 dollars (\$1,000), by imprisonment in a county jail not exceeding
31 one year, or by both that fine and imprisonment, when the moneys,
32 labor, goods, services, or real or personal property taken or obtained
33 is of a value not exceeding nine hundred fifty dollars (\$950).

34 (f) Any person who commits the false imprisonment of an elder
35 or a dependent adult by the use of violence, menace, fraud, or
36 deceit is punishable by imprisonment ~~in the state prison pursuant~~
37 ~~to subdivision (h) of Section 1170~~ for two, three, or four years.

38 (g) As used in this section, “elder” means any person who is 65
39 years of age or older.

(h) As used in this section, “dependent adult” means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, “caretaker” means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

SEC. 337. Section 374.2 of the Penal Code is amended to read:

374.2. (a) It is unlawful for any person to maliciously discharge, dump, release, place, drop, pour, or otherwise deposit, or to maliciously cause to be discharged, dumped, released, placed, dropped, poured, or otherwise deposited, any substance capable of causing substantial damage or harm to the operation of a public sewer sanitary facility, or to deposit in commercial quantities any other substance, into a manhole, cleanout, or other sanitary sewer facility, not intended for use as a point of deposit for sewage, which is connected to a public sanitary sewer system, without possessing a written authorization therefor granted by the public entity which is charged with the administration of the use of the affected public

1 sanitary sewer system or the affected portion of the public sanitary
2 sewer system.

3 As used in this section, “maliciously” means an intent to do a
4 wrongful act.

5 (b) For the purposes of this section “person” means an
6 individual, trust, firm, partnership, joint stock company, limited
7 liability company, or corporation, and “deposited in commercial
8 quantities” refers to any substance deposited or otherwise
9 discharged in any amount greater than for normal domestic sewer
10 use.

11 (c) Lack of specific knowledge that the facility into which the
12 prohibited discharge or release occurred is connected to a public
13 sanitary sewer system shall not constitute a defense to a violation
14 charged under this section.

15 (d) Any person who violates this section shall be punished by
16 imprisonment in the county jail for not more than one year, or by
17 a fine of up to twenty-five thousand dollars (\$25,000), or by both
18 a fine and imprisonment. If the conviction is for a second or
19 subsequent violation, the person shall be punished by imprisonment
20 in the county jail for not more than one year, or imprisonment ~~in~~
21 ~~the state prison pursuant to subdivision (h) of Section 1170~~ for 16,
22 20, or 24 months, and by a fine of not less than five thousand
23 dollars (\$5,000) or more than twenty-five thousand dollars
24 (\$25,000).

25 *SEC. 338. Section 374.8 of the Penal Code is amended to read:*

26 374.8. (a) In any prosecution under this section, proof of the
27 elements of the offense shall not be dependent upon the
28 requirements of Title 22 of the California Code of Regulations.

29 (b) Any person who knowingly causes any hazardous substance
30 to be deposited into or upon any road, street, highway, alley, or
31 railroad right-of-way, or upon the land of another, without the
32 permission of the owner, or into the waters of this state is
33 punishable by imprisonment in the county jail for not more than
34 one year or by imprisonment ~~in the state prison pursuant to~~
35 ~~subdivision (h) of Section 1170~~ for a term of 16 months, two years,
36 or three years, or by a fine of not less than fifty dollars (\$50) nor
37 more than ten thousand dollars (\$10,000), or by both the fine and
38 imprisonment, unless the deposit occurred as a result of an
39 emergency that the person promptly reported to the appropriate
40 regulatory authority.

(c) For purposes of this section, “hazardous substance” means either of the following:

(1) Any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the environment, including, but not limited to, hazardous waste and any material that the administering agency or a handler, as defined in Chapter 6.91 (commencing with Section 25410) of Division 20 of the Health and Safety Code, has a reasonable basis for believing would be injurious to the health and safety of persons or harmful to the environment if released into the environment.

(2) Any substance or chemical product for which one of the following applies:

(A) The manufacturer or producer is required to prepare a MSDS, as defined in Section 6374 of the Labor Code, for the substance or product pursuant to the Hazardous Substances Information Training Act (Chapter 2.5 (commencing with Section 6360) of Part 1 of Division 5 of the Labor Code) or pursuant to any applicable federal law or regulation.

(B) The substance is described as a radioactive material in Chapter 1 of Title 10 of the Code of Federal Regulations maintained and updated by the nuclear Regulatory Commission.

(C) The substance is designated by the Secretary of Transportation in Chapter 27 (commencing with Section 1801) of the appendix to Title 49 of the United States Code and taxed as a radioactive substance or material.

(D) The materials listed in subdivision (b) of Section 6382 of the Labor Code.

SEC. 339. Section 375 of the Penal Code is amended to read:

375. (a) It shall be unlawful to throw, drop, pour, deposit, release, discharge or expose, or to attempt to throw, drop, pour, deposit, release, discharge or expose in, upon or about any theater, restaurant, place of business, place of amusement or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses.

(b) It shall be unlawful to manufacture or prepare, or to possess any liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening,

1 irritating or offensive, to any of the senses with intent to throw,
2 drop, pour, deposit, release, discharge or expose the same in, upon
3 or about any theater, restaurant, place of business, place of
4 amusement, or any other place of public assemblage.

5 (c) Any person violating any of the provisions hereof shall be
6 punished by imprisonment in the county jail for not less than three
7 months and not more than one year, or by a fine of not less than
8 five hundred dollars (\$500) and not more than two thousand dollars
9 (\$2,000), or by both ~~such~~ *that* fine and imprisonment.

10 (d) Any person who, in violating any of the provisions of
11 subdivision (a), willfully employs or uses any liquid, gaseous or
12 solid substance which may produce serious illness or permanent
13 injury through being vaporized or otherwise dispersed in the air
14 or who, in violating any of the provisions of subdivision (a),
15 willfully employs or uses any tear gas, mustard gas or any of the
16 combinations or compounds thereof, or willfully employs or uses
17 acid or explosives, shall be guilty of a felony and shall be punished
18 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
19 *Section 1170.*

20 *SEC. 340. Section 382.5 of the Penal Code is amended to read:*

21 382.5. Every person who sells, dispenses, administers or
22 prescribes dinitrophenol for any purpose shall be guilty of a felony,
23 punishable by a fine not less than one thousand dollars (\$1,000)
24 nor more than ten thousand dollars (\$10,000), or by imprisonment
25 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170,* or
26 by both ~~such~~ *that* fine and imprisonment.

27 This section shall not apply to dinitrophenol manufactured or
28 sold as an economic poison registered under the provision of
29 Section 12811 of the Food and Agricultural Code nor to sales for
30 use in manufacturing or for scientific purposes, and not for human
31 consumption.

32 *SEC. 341. Section 382.6 of the Penal Code is amended to read:*

33 382.6. Every person who sells, dispenses, administers or
34 prescribes preparations containing diphenylamine,
35 paraphenylenediamine, or paratoluylenediamine, or a derivative
36 of any such chemicals, to be used as eyebrow and eyelash dye,
37 shall be guilty of a felony, punishable by a fine not less than one
38 thousand dollars (\$1,000) nor more than ten thousand dollars
39 (\$10,000), or by imprisonment ~~in the state prison~~ *pursuant to*

1 subdivision (h) of Section 1170, or by both ~~such~~ that fine and
2 imprisonment.

3 SEC. 342. Section 386 of the Penal Code is amended to read:

4 386. (a) Any person who willfully or maliciously constructs
5 or maintains a fire-protection system in any structure with the
6 intent to install a fire protection system which is known to be
7 inoperable or to impair the effective operation of a system, so as
8 to threaten the safety of any occupant or user of the structure in
9 the event of a fire, shall be subject to imprisonment ~~in the state~~
10 ~~prison pursuant to subdivision (h) of Section 1170~~ for two, three,
11 or four years.

12 (b) A violation of subdivision (a) which proximately results in
13 great bodily injury or death is a felony punishable by imprisonment
14 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
15 five, six, or seven years.

16 (c) As used in this section, “fire-protection system” includes,
17 but is not limited to, an automatic fire sprinkler system, standpipe
18 system, automatic fixed fire extinguishing system, and fire alarm
19 system.

20 (d) For purposes of this section, the following definitions shall
21 control:

22 (1) “Automatic fire sprinkler system” means an integrated
23 system of underground and overhead piping designed in accordance
24 with fire protection engineering standards. The portion of the
25 sprinkler system above ground is a network of specially sized or
26 hydraulically designed piping installed in a building, structure, or
27 area, generally overhead, and to which sprinklers are attached in
28 a systematic pattern. The valve controlling each system riser is
29 located in the system riser or its supply piping. Each sprinkler
30 system riser includes a device for activating an alarm when the
31 system is in operation. The system is normally activated by heat
32 from a fire, and it discharges water over the fire area.

33 (2) “Standpipe system” means an arrangement of piping, valves,
34 and hose connectors and allied equipment installed in a building
35 or structure with the hose connectors located in a manner that water
36 can be discharged in streams or spray patterns through attached
37 hose and nozzles. The purpose of the system is to extinguish a fire,
38 thereby protecting a building or structure and its contents and
39 occupants. This system relies upon connections to water supply

1 systems or pumps, tanks, and other equipment necessary to provide
2 an adequate supply of water to the hose connectors.

3 (3) “Automatic fixed fire extinguishing system” means either
4 of the following:

5 (A) An engineered fixed extinguishing system which is custom
6 designed for a particular hazard, using components which are
7 approved or listed only for their broad performance characteristics.
8 Components may be arranged into a variety of configurations.
9 These systems shall include, but not be limited to, dry chemical
10 systems, carbon dioxide systems, halogenated agent systems, steam
11 systems, high expansion foam systems, foam extinguishing
12 systems, and liquid agent systems.

13 (B) A pre-engineered fixed extinguishing system is a system
14 where the number of components and their configurations are
15 included in the description of the system’s approval and listing.
16 These systems include, but are not limited to, dry chemical systems,
17 carbon dioxide systems, halogenated agent systems, and liquid
18 agent systems.

19 (4) “Fire alarm system” means a control unit and a combination
20 of electrical interconnected devices designed and intended to cause
21 an alarm or warning of fire in a building or structure by either
22 manual or automatic activation, or by both, and includes the
23 systems installed throughout any building or portion thereof.

24 (5) “Structure” means any building, whether private,
25 commercial, or public, or any bridge, tunnel, or powerplant.

26 *SEC. 343. Section 387 of the Penal Code is amended to read:*

27 387. (a) Any corporation, limited liability company, or person
28 who is a manager with respect to a product, facility, equipment,
29 process, place of employment, or business practice, is guilty of a
30 public offense punishable by imprisonment in the county jail for
31 a term not exceeding one year, or by a fine not exceeding ten
32 thousand dollars (\$10,000), or by both that fine and imprisonment;
33 or by imprisonment in the state prison pursuant to subdivision (h)
34 of Section 1170 for 16 months, two, or three years, or by a fine not
35 exceeding twenty-five thousand dollars (\$25,000); or by both that
36 fine and imprisonment, but if the defendant is a corporation or a
37 limited liability company the fine shall not exceed one million
38 dollars (\$1,000,000), if that corporation, limited liability company,
39 or person does all of the following:

1 (1) Has actual knowledge of a serious concealed danger that is
2 subject to the regulatory authority of an appropriate agency and is
3 associated with that product or a component of that product or
4 business practice.

5 (2) Knowingly fails during the period ending 15 days after the
6 actual knowledge is acquired, or if there is imminent risk of great
7 bodily harm or death, immediately, to do both of the following:

8 (A) Inform the Division of Occupational Safety and Health in
9 the Department of Industrial Relations in writing, unless the
10 corporation, limited liability company, or manager has actual
11 knowledge that the division has been so informed.

12 Where the concealed danger reported pursuant to this paragraph
13 is subject to the regulatory authority of an agency other than the
14 Division of Occupational Safety and Health in the Department of
15 Industrial Relations, it shall be the responsibility of the Division
16 of Occupational Safety and Health in the Department of Industrial
17 Relations, within 24 hours of receipt of the information, to
18 telephonically notify the appropriate government agency of the
19 hazard, and promptly forward any written notification received.

20 (B) Warn its affected employees in writing, unless the
21 corporation, limited liability company, or manager has actual
22 knowledge that the employees have been so warned.

23 The requirement for disclosure is not applicable if the hazard is
24 abated within the time prescribed for reporting, unless the
25 appropriate regulatory agency nonetheless requires disclosure by
26 regulation.

27 Where the Division of Occupational Safety and Health in the
28 Department of Industrial Relations was not notified, but the
29 corporation, limited liability company, or manager reasonably and
30 in good faith believed that they were complying with the
31 notification requirements of this section by notifying another
32 government agency, as listed in paragraph (8) of subdivision (d),
33 no penalties shall apply.

34 (b) As used in this section:

35 (1) "Manager" means a person having both of the following:

36 (A) Management authority in or as a business entity.

37 (B) Significant responsibility for any aspect of a business that
38 includes actual authority for the safety of a product or business
39 practice or for the conduct of research or testing in connection
40 with a product or business practice.

1 (2) “Product” means an article of trade or commerce or other
2 item of merchandise that is a tangible or an intangible good, and
3 includes services.

4 (3) “Actual knowledge,” used with respect to a serious concealed
5 danger, means has information that would convince a reasonable
6 person in the circumstances in which the manager is situated that
7 the serious concealed danger exists.

8 (4) “Serious concealed danger,” used with respect to a product
9 or business practice, means that the normal or reasonably
10 foreseeable use of, or the exposure of an individual to, the product
11 or business practice creates a substantial probability of death, great
12 bodily harm, or serious exposure to an individual, and the danger
13 is not readily apparent to an individual who is likely to be exposed.

14 (5) “Great bodily harm” means a significant or substantial
15 physical injury.

16 (6) “Serious exposure” means any exposure to a hazardous
17 substance, when the exposure occurs as a result of an incident or
18 exposure over time and to a degree or in an amount sufficient to
19 create a substantial probability that death or great bodily harm in
20 the future would result from the exposure.

21 (7) “Warn its affected employees” means give sufficient
22 description of the serious concealed danger to all individuals
23 working for or in the business entity who are likely to be subject
24 to the serious concealed danger in the course of that work to make
25 those individuals aware of that danger.

26 (8) “Appropriate government agency” means an agency on the
27 following list that has regulatory authority with respect to the
28 product or business practice and serious concealed dangers of the
29 sort discovered:

30 (A) The Division of Occupational Safety and Health in the
31 Department of Industrial Relations.

32 (B) State Department of Health Services.

33 (C) Department of Agriculture.

34 (D) County departments of health.

35 (E) The United States Food and Drug Administration.

36 (F) The United States Environmental Protection Agency.

37 (G) The National Highway Traffic Safety Administration.

38 (H) The Federal Occupation Safety and Health Administration.

39 (I) The Nuclear Regulatory Commission.

40 (J) The Consumer Product Safety Commission.

1 (K) The Federal Aviation Administration.

2 (L) The Federal Mine Safety and Health Review Commission.

3 (c) Notification received pursuant to this section shall not be
4 used against any manager in any criminal case, except a prosecution
5 for perjury or for giving a false statement.

6 (d) No person who is a manager of a limited liability company
7 shall be personally liable for acts or omissions for which the limited
8 liability company is liable under subdivision (a) solely by reason
9 of being a manager of the limited liability company. A person who
10 is a manager of a limited liability company may be held liable
11 under subdivision (a) if that person is also a “manager” within the
12 meaning of paragraph (1) of subdivision (b).

13 *SEC. 344. Section 399.5 of the Penal Code is amended to read:*

14 399.5. (a) Any person owning or having custody or control of
15 a dog trained to fight, attack, or kill is guilty of a felony or a
16 misdemeanor, punishable by imprisonment in the state prison for
17 ~~two, three, or four years, or in a county jail not to exceed one year,~~
18 *or imprisonment pursuant to subdivision (h) of Section 1170 for*
19 *two, three, or four years, or by a fine not exceeding ten thousand*
20 *dollars (\$10,000), or by both the fine and imprisonment, if, as a*
21 *result of that person’s failure to exercise ordinary care, the dog*
22 *bites a human being, on two separate occasions or on one occasion*
23 *causing substantial physical injury. No person shall be criminally*
24 *liable under this section, however, unless he or she knew or*
25 *reasonably should have known of the vicious or dangerous nature*
26 *of the dog, or if the victim failed to take all the precautions that a*
27 *reasonable person would ordinarily take in the same situation.*

28 (b) Following the conviction of an individual for a violation of
29 this section, the court shall hold a hearing to determine whether
30 conditions of the treatment or confinement of the dog or other
31 circumstances existing at the time of the bite or bites have changed
32 so as to remove the danger to other persons presented by the
33 animal. The court, after hearing, may make any order it deems
34 appropriate to prevent the recurrence of such an incident, including,
35 but not limited to, the removal of the animal from the area or its
36 destruction if necessary.

37 (c) Nothing in this section shall authorize the bringing of an
38 action pursuant to subdivision (a) based on a bite or bites inflicted
39 upon a trespasser, upon a person who has provoked the dog or
40 contributed to his or her own injuries, or by a dog used in military

1 or police work if the bite or bites occurred while the dog was
2 actually performing in that capacity. As used in this subdivision,
3 “provocation” includes, but is not limited to, situations where a
4 dog held on a leash by its owner or custodian reacts in a protective
5 manner to a person or persons who approach the owner or custodian
6 in a threatening manner.

7 (d) Nothing in this section shall be construed to affect the
8 liability of the owner of a dog under Section 399 or any other
9 provision of law.

10 (e) This section shall not apply to a veterinarian or an on-duty
11 animal control officer while in the performance of his or her duties,
12 or to a peace officer, as defined in Chapter 4.5 (commencing with
13 Section 830) of Title 3 of Part 2, if he or she is assigned to a canine
14 unit.

15 *SEC. 345. Section 404.6 of the Penal Code is amended to read:*

16 404.6. (a) Every person who with the intent to cause a riot
17 does an act or engages in conduct that urges a riot, or urges others
18 to commit acts of force or violence, or the burning or destroying
19 of property, and at a time and place and under circumstances that
20 produce a clear and present and immediate danger of acts of force
21 or violence or the burning or destroying of property, is guilty of
22 incitement to riot.

23 (b) Incitement to riot is punishable by a fine not exceeding one
24 thousand dollars (\$1,000), or by imprisonment in a county jail not
25 exceeding one year, or by both that fine and imprisonment.

26 (c) Every person who incites any riot in the state prison or a
27 county jail that results in serious bodily injury, shall be punished
28 by either imprisonment in a county jail for not more than one year,
29 or imprisonment ~~in the state prison pursuant to subdivision (h) of~~
30 *Section 1170*.

31 (d) The existence of any fact that would bring a person under
32 subdivision (c) shall be alleged in the complaint, information, or
33 indictment and either admitted by the defendant in open court, or
34 found to be true by the jury trying the issue of guilt, by the court
35 where guilt is established by a plea of guilty or nolo contendere,
36 or by trial by the court sitting without a jury.

37 *SEC. 346. Section 405b of the Penal Code is amended to read:*

38 405b. Every person who participates in any lynching is
39 punishable by imprisonment ~~in the state prison pursuant to~~
40 *subdivision (h) of Section 1170* for two, three or four years.

1 *SEC. 347. Section 417 of the Penal Code is amended to read:*

2 417. (a) (1) Every person who, except in self-defense, in the
3 presence of any other person, draws or exhibits any deadly weapon
4 whatsoever, other than a firearm, in a rude, angry, or threatening
5 manner, or who in any manner, unlawfully uses a deadly weapon
6 other than a firearm in any fight or quarrel is guilty of a
7 misdemeanor, punishable by imprisonment in a county jail for not
8 less than 30 days.

9 (2) Every person who, except in self-defense, in the presence
10 of any other person, draws or exhibits any firearm, whether loaded
11 or unloaded, in a rude, angry, or threatening manner, or who in
12 any manner, unlawfully uses a firearm in any fight or quarrel is
13 punishable as follows:

14 (A) If the violation occurs in a public place and the firearm is
15 a pistol, revolver, or other firearm capable of being concealed upon
16 the person, by imprisonment in a county jail for not less than three
17 months and not more than one year, by a fine not to exceed one
18 thousand dollars (\$1,000), or by both that fine and imprisonment.

19 (B) In all cases other than that set forth in subparagraph (A), a
20 misdemeanor, punishable by imprisonment in a county jail for not
21 less than three months.

22 (b) Every person who, except in self-defense, in the presence
23 of any other person, draws or exhibits any loaded firearm in a rude,
24 angry, or threatening manner, or who, in any manner, unlawfully
25 uses any loaded firearm in any fight or quarrel upon the grounds
26 of any day care center, as defined in Section 1596.76 of the Health
27 and Safety Code, or any facility where programs, including day
28 care programs or recreational programs, are being conducted for
29 persons under 18 years of age, including programs conducted by
30 a nonprofit organization, during the hours in which the center or
31 facility is open for use, shall be punished by imprisonment in the
32 state prison for 16 months, or two or three years, or by
33 imprisonment in a county jail for not less than three months, nor
34 more than one year.

35 (c) Every person who, in the immediate presence of a peace
36 officer, draws or exhibits any firearm, whether loaded or unloaded,
37 in a rude, angry, or threatening manner, and who knows, or
38 reasonably should know, by the officer's uniformed appearance
39 or other action of identification by the officer, that he or she is a
40 peace officer engaged in the performance of his or her duties, and

1 that peace officer is engaged in the performance of his or her duties,
2 shall be punished by imprisonment in a county jail for not less
3 than nine months and not to exceed one year, or in the state prison
4 *for 16 months, or two or three years.*

5 (d) Except where a different penalty applies, every person who
6 violates this section when the other person is in the process of
7 cleaning up graffiti or vandalism is guilty of a misdemeanor,
8 punishable by imprisonment in a county jail for not less than three
9 months nor more than one year.

10 (e) As used in this section, “peace officer” means any person
11 designated as a peace officer pursuant to Chapter 4.5 (commencing
12 with Section 830) of Title 3 of Part 2.

13 (f) As used in this section, “public place” means any of the
14 following:

15 (1) A public place in an incorporated city.

16 (2) A public street in an incorporated city.

17 (3) A public street in an unincorporated area.

18 *SEC. 348. Section 417.3 of the Penal Code is amended to read:*

19 417.3. Every person who, except in self-defense, in the presence
20 of any other person who is an occupant of a motor vehicle
21 proceeding on a public street or highway, draws or exhibits any
22 firearm, whether loaded or unloaded, in a threatening manner
23 against another person in such a way as to cause a reasonable
24 person apprehension or fear of bodily harm is guilty of a felony
25 punishable by imprisonment ~~in the state prison pursuant to~~
26 *subdivision (h) of Section 1170* for 16 months or two or three years
27 or by imprisonment for 16 months or two or three years and a three
28 thousand dollar (\$3,000) fine.

29 Nothing in this section shall preclude or prohibit prosecution
30 under any other statute.

31 *SEC. 349. Section 417.6 of the Penal Code, as amended by*
32 *Section 2 of Chapter 478 of the Statutes of 2000, is amended to*
33 *read:*

34 417.6. (a) If, in the commission of a violation of Section 417
35 or 417.8, serious bodily injury is intentionally inflicted by the
36 person drawing or exhibiting the firearm or deadly weapon, the
37 offense shall be punished by imprisonment in the county jail not
38 exceeding one year or by imprisonment ~~in the state prison pursuant~~
39 *to subdivision (h) of Section 1170.*

(b) As used in this section, “serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(c) When a person is convicted of a violation of Section 417 or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Section 12028.

SEC. 350. Section 417.6 of the Penal Code, as amended by Section 57 of Chapter 178 of the Statutes of 2010, is amended to read:

417.6. (a) If, in the commission of a violation of Section 417 or 417.8, serious bodily injury is intentionally inflicted by the person drawing or exhibiting the firearm or deadly weapon, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

(b) As used in this section, “serious bodily injury” means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(c) When a person is convicted of a violation of Section 417 or 417.8 and the deadly weapon or firearm used by the person is owned by that person, the court shall order that the weapon or firearm be deemed a nuisance and disposed of in the manner provided by Sections 18000 and 18005.

SEC. 351. Section 422 of the Penal Code is amended to read:

422. Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an

1 immediate prospect of execution of the threat, and thereby causes
2 that person reasonably to be in sustained fear for his or her own
3 safety or for his or her immediate family's safety, shall be punished
4 by imprisonment in the county jail not to exceed one year, or by
5 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
6 Section 1170.

7 For the purposes of this section, "immediate family" means any
8 spouse, whether by marriage or not, parent, child, any person
9 related by consanguinity or affinity within the second degree, or
10 any other person who regularly resides in the household, or who,
11 within the prior six months, regularly resided in the household.

12 "Electronic communication device" includes, but is not limited
13 to, telephones, cellular telephones, computers, video recorders,
14 fax machines, or pagers. "Electronic communication" has the same
15 meaning as the term defined in Subsection 12 of Section 2510 of
16 Title 18 of the United States Code.

17 SEC. 352. Section 422.7 of the Penal Code is amended to read:

18 422.7. Except in the case of a person punished under Section
19 422.6, any hate crime that is not made punishable by imprisonment
20 in the state prison shall be punishable by imprisonment ~~in the state~~
21 ~~prison or in~~ a county jail not to exceed one year, *or by*
22 *imprisonment pursuant to subdivision (h) of Section 1170, or by*
23 *a fine not to exceed ten thousand dollars (\$10,000), or by both that*
24 *imprisonment and fine, if the crime is committed against the person*
25 *or property of another for the purpose of intimidating or interfering*
26 *with that other person's free exercise or enjoyment of any right*
27 *secured to him or her by the Constitution or laws of this state or*
28 *by the Constitution or laws of the United States under any of the*
29 *following circumstances, which shall be charged in the accusatory*
30 *pleading:*

31 (a) The crime against the person of another either includes the
32 present ability to commit a violent injury or causes actual physical
33 injury.

34 (b) The crime against property causes damage in excess of nine
35 hundred fifty dollars (\$950).

36 (c) The person charged with a crime under this section has been
37 convicted previously of a violation of subdivision (a) or (b) of
38 Section 422.6, or has been convicted previously of a conspiracy
39 to commit a crime described in subdivision (a) or (b) of Section
40 422.6.

1 *SEC. 353. Section 453 of the Penal Code is amended to read:*

2 453. (a) Every person who possesses, manufactures, or
3 disposes of any flammable, or combustible material or substance,
4 or any incendiary device in an arrangement or preparation, with
5 intent to willfully and maliciously use this material, substance, or
6 device to set fire to or burn any structure, forest land, or property,
7 shall be punished by imprisonment ~~in the state prison~~ pursuant to
8 subdivision (h) of Section 1170, or in a county jail, not exceeding
9 one year.

10 (b) For the purposes of this section:

11 (1) "Disposes of" means to give, give away, loan, offer, offer
12 for sale, sell, or transfer.

13 (2) "Incendiary device" means a device that is constructed or
14 designed to start an incendiary fire by remote, delayed, or instant
15 means, but no device commercially manufactured primarily for
16 the purpose of illumination shall be deemed to be an incendiary
17 device for the purposes of this section.

18 (3) "Incendiary fire" means a fire that is deliberately ignited
19 under circumstances in which a person knows that the fire should
20 not be ignited.

21 (c) Subdivision (a) does not prohibit the authorized use or
22 possession of any material, substance or device described therein
23 by a member of the armed forces of the United States or by
24 firemen, police officers, peace officers, or law enforcement officers
25 authorized by the properly constituted authorities; nor does that
26 subdivision prohibit the use or possession of any material,
27 substance or device described therein when used solely for
28 scientific research or educational purposes, or for disposal of brush
29 under permit as provided for in Section 4494 of the Public
30 Resources Code, or for any other lawful burning. Subdivision (a)
31 does not prohibit the manufacture or disposal of an incendiary
32 device for the parties or purposes described in this subdivision.

33 *SEC. 354. Section 455 of the Penal Code is amended to read:*

34 455. Any person who willfully and maliciously attempts to set
35 fire to or attempts to burn or to aid, counsel or procure the burning
36 of any structure, forest land or property, or who commits any act
37 preliminary thereto, or in furtherance thereof, is punishable by
38 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
39 Section 1170 for 16 months, two or three years.

1 The placing or distributing of any flammable, explosive or
2 combustible material or substance, or any device in or about any
3 structure, forest land or property in an arrangement or preparation
4 with intent to eventually willfully and maliciously set fire to or
5 burn same, or to procure the setting fire to or burning of the same
6 shall, for the purposes of this act constitute an attempt to burn such
7 structure, forest land or property.

8 *SEC. 355. Section 461 of the Penal Code is amended to read:*

9 461. Burglary is punishable as follows:

10 (a) Burglary in the first degree: by imprisonment in the state
11 prison for two, four, or six years.

12 (b) Burglary in the second degree: by imprisonment in the
13 county jail not exceeding one year or ~~in the state prison~~
14 *imprisonment pursuant to subdivision (h) of Section 1170.*

15 *SEC. 356. Section 463 of the Penal Code is amended to read:*

16 463. (a) Every person who violates Section 459, punishable
17 as a second-degree burglary pursuant to subdivision (b) of Section
18 461, during and within an affected county in a “state of emergency”
19 or a “local emergency” resulting from an earthquake, fire, flood,
20 riot, or other natural or manmade disaster shall be guilty of the
21 crime of looting, punishable by imprisonment in a county jail for
22 one year or ~~in the state prison~~ *pursuant to subdivision (h) of Section*
23 *1170.* Any person convicted under this subdivision who is eligible
24 for probation and who is granted probation shall, as a condition
25 thereof, be confined in a county jail for at least 180 days, except
26 that the court may, in the case where the interest of justice would
27 best be served, reduce or eliminate that mandatory jail sentence,
28 if the court specifies on the record and enters into the minutes the
29 circumstances indicating that the interest of justice would best be
30 served by that disposition. In addition to whatever custody is
31 ordered, the court, in its discretion, may require any person granted
32 probation following conviction under this subdivision to serve up
33 to 240 hours of community service in any program deemed
34 appropriate by the court, including any program created to rebuild
35 the community.

36 For purposes of this section, the fact that the structure entered
37 has been damaged by the earthquake, fire, flood, or other natural
38 or manmade disaster shall not, in and of itself, preclude conviction.

39 (b) Every person who commits the crime of grand theft, as
40 defined in Section 487, except grand theft of a firearm, during and

1 within an affected county in a “state of emergency” or a “local
2 emergency” resulting from an earthquake, fire, flood, riot, or other
3 natural or unnatural disaster shall be guilty of the crime of looting,
4 punishable by imprisonment in a county jail for one year or ~~in the~~
5 ~~state prison pursuant to subdivision (h) of Section 1170.~~ Every
6 person who commits the crime of grand theft of a firearm, as
7 defined in Section 487, during and within an affected county in a
8 “state of emergency” or a “local emergency” resulting from an
9 earthquake, fire, flood, riot, or other natural or unnatural disaster
10 shall be guilty of the crime of looting, punishable by imprisonment
11 in the state prison, as set forth in subdivision (a) of Section 489.
12 Any person convicted under this subdivision who is eligible for
13 probation and who is granted probation shall, as a condition thereof,
14 be confined in a county jail for at least 180 days, except that the
15 court may, in the case where the interest of justice would best be
16 served, reduce or eliminate that mandatory jail sentence, if the
17 court specifies on the record and enters into the minutes the
18 circumstances indicating that the interest of justice would best be
19 served by that disposition. In addition to whatever custody is
20 ordered, the court, in its discretion, may require any person granted
21 probation following conviction under this subdivision to serve up
22 to 160 hours of community service in any program deemed
23 appropriate by the court, including any program created to rebuild
24 the community.

25 (c) Every person who commits the crime of petty theft, as
26 defined in Section 488, during and within an affected county in a
27 “state of emergency” or a “local emergency” resulting from an
28 earthquake, fire, flood, riot, or other natural or manmade disaster
29 shall be guilty of a misdemeanor, punishable by imprisonment in
30 a county jail for six months. Any person convicted under this
31 subdivision who is eligible for probation and who is granted
32 probation shall, as a condition thereof, be confined in a county jail
33 for at least 90 days, except that the court may, in the case where
34 the interest of justice would best be served, reduce or eliminate
35 that mandatory minimum jail sentence, if the court specifies on
36 the record and enters into the minutes the circumstances indicating
37 that the interest of justice would best be served by that disposition.
38 In addition to whatever custody is ordered, the court, in its
39 discretion, may require any person granted probation following
40 conviction under this subdivision to serve up to 80 hours of

1 community service in any program deemed appropriate by the
2 court, including any program created to rebuild the community.

3 (d) (1) For purposes of this section, “state of emergency” means
4 conditions which, by reason of their magnitude, are, or are likely
5 to be, beyond the control of the services, personnel, equipment,
6 and facilities of any single county, city and county, or city and
7 require the combined forces of a mutual aid region or regions to
8 combat.

9 (2) For purposes of this section, “local emergency” means
10 conditions which, by reason of their magnitude, are, or are likely
11 to be, beyond the control of the services, personnel, equipment,
12 and facilities of any single county, city and county, or city and
13 require the combined forces of a mutual aid region or regions to
14 combat.

15 (3) For purposes of this section, a “state of emergency” shall
16 exist from the time of the proclamation of the condition of the
17 emergency until terminated pursuant to Section 8629 of the
18 Government Code. For purposes of this section only, a “local
19 emergency” shall exist from the time of the proclamation of the
20 condition of the emergency by the local governing body until
21 terminated pursuant to Section 8630 of the Government Code.

22 (4) Consensual entry into a commercial structure with the intent
23 to commit a violation of Section 470, 476, 476a, 484f, or 484g of
24 the Penal Code, shall not be charged as a violation under this
25 section.

26 *SEC. 357. Section 464 of the Penal Code is amended to read:*

27 464. Any person who, with intent to commit crime, enters,
28 either by day or by night, any building, whether inhabited or not,
29 and opens or attempts to open any vault, safe, or other secure place
30 by use of acetylene torch or electric arc, burning bar, thermal lance,
31 oxygen lance, or any other similar device capable of burning
32 through steel, concrete, or any other solid substance, or by use of
33 nitroglycerine, dynamite, gunpowder, or any other explosive, is
34 guilty of a felony and, upon conviction, shall be punished by
35 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
36 *Section 1170* for a term of three, five, or seven years.

37 *SEC. 358. Section 470a of the Penal Code is amended to read:*

38 470a. Every person who alters, falsifies, forges, duplicates or
39 in any manner reproduces or counterfeits any driver’s license or
40 identification card issued by a governmental agency with the intent

1 that such driver's license or identification card be used to facilitate
2 the commission of any forgery, is punishable by imprisonment in
3 ~~the state prison, or by imprisonment in the a~~ county jail for not
4 more than one year, *or by imprisonment pursuant to subdivision*
5 *(h) of Section 1170.*

6 *SEC. 359. Section 470b of the Penal Code is amended to read:*

7 470b. Every person who displays or causes or permits to be
8 displayed or has in his *or her* possession any driver's license or
9 identification card of the type enumerated in Section 470a with
10 the intent that ~~such~~ *the* driver's license or identification card be
11 used to facilitate the commission of any forgery, is punishable by
12 imprisonment in ~~the state prison, or by imprisonment in the a~~
13 county jail for not more than one year, *or by imprisonment pursuant*
14 *to subdivision (h) of Section 1170.*

15 *SEC. 360. Section 473 of the Penal Code is amended to read:*

16 473. Forgery is punishable by imprisonment in ~~the state prison,~~
17 ~~or by imprisonment in the a~~ county jail for not more than one year,
18 *or by imprisonment pursuant to subdivision (h) of Section 1170.*

19 *SEC. 361. Section 474 of the Penal Code is amended to read:*

20 474. Every person who knowingly and willfully sends by
21 telegraph or telephone to any person a false or forged message,
22 purporting to be from a telegraph or telephone office, or from any
23 other person, or who willfully delivers or causes to be delivered
24 to any person any such message falsely purporting to have been
25 received by telegraph or telephone, or who furnishes, or conspires
26 to furnish, or causes to be furnished to any agent, operator, or
27 employee, to be sent by telegraph or telephone, or to be delivered,
28 any such message, knowing the same to be false or forged, with
29 the intent to deceive, injure, or defraud another, is punishable by
30 imprisonment in ~~the state prison, or in the a~~ county jail not
31 exceeding one year, *or by imprisonment pursuant to subdivision*
32 *(h) of Section 1170, or by a fine not exceeding ten thousand dollars*
33 *(\$10,000), or by both ~~such~~ that fine and imprisonment.*

34 *SEC. 362. Section 478 of the Penal Code is amended to read:*

35 478. Counterfeiting is punishable by imprisonment in ~~the state~~
36 ~~prison pursuant to subdivision (h) of Section 1170~~ for two, three
37 or four years.

38 *SEC. 363. Section 479 of the Penal Code is amended to read:*

39 479. Every person who has in his possession, or receives for
40 any other person, any counterfeit gold or silver coin of the species

current in this state, or any counterfeit gold dust, gold or silver bullion or bars, lumps, pieces or nuggets, with the intention to sell, utter, put off or pass the same, or permits, causes or procures the same to be sold, uttered or passed, with intention to defraud any person, knowing the same to be counterfeit, is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for two, three or four years.

SEC. 364. Section 480 of the Penal Code is amended to read:

480. (a) Every person who makes, or knowingly has in his or her possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for two, three, or four years; and all dies, plates, apparatus, papers, metals, or machines intended for the purpose aforesaid, must be destroyed.

(b) (1) If the counterfeiting apparatus or machine used to violate this section is a computer, computer system, or computer network, the apparatus or machine shall be disposed of pursuant to Section 502.01.

(2) For the purposes of this section, “computer system” and “computer network” have the same meaning as that specified in Section 502. The terms “computer, computer system, or computer network” include any software or data residing on the computer, computer system, or computer network used in a violation of this section.

SEC. 365. Section 481 of the Penal Code is amended to read:

481. Every person who counterfeits, forges, or alters any ticket, check, order, coupon, receipt for fare, or pass, issued by any railroad or steamship company, or by any lessee or manager thereof, designed to entitle the holder to ride in the cars or vessels of such company, or who utters, publishes, or puts into circulation, any such counterfeit or altered ticket, check, or order, coupon, receipt for fare, or pass, with intent to defraud any such railroad or steamship company, or any lessee thereof, or any other person, is punishable by imprisonment ~~in the state prison, or in the a county jail,~~ not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by fine not exceeding one thousand dollars, or by both ~~such that~~ imprisonment and fine.

1 *SEC. 366. Section 483.5 of the Penal Code is amended to read:*
2 483.5. (a) No deceptive identification document shall be
3 manufactured, sold, offered for sale, furnished, offered to be
4 furnished, transported, offered to be transported, or imported or
5 offered to be imported into this state unless there is diagonally
6 across the face of the document, in not less than 14-point type and
7 printed conspicuously on the document in permanent ink, the
8 following statement:

9
10 NOT A GOVERNMENT DOCUMENT
11

12 and, also printed conspicuously on the document, the name of
13 the manufacturer.

14 (b) No document-making device may be possessed with the
15 intent that the device will be used to manufacture, alter, or
16 authenticate a deceptive identification document.

17 (c) As used in this section, “deceptive identification document”
18 means any document not issued by a governmental agency of this
19 state, another state, the federal government, a foreign government,
20 a political subdivision of a foreign government, an international
21 government, or an international quasi-governmental organization,
22 which purports to be, or which might deceive an ordinary
23 reasonable person into believing that it is, a document issued by
24 such an agency, including, but not limited to, a driver’s license,
25 identification card, birth certificate, passport, or social security
26 card.

27 (d) As used in this section, “document-making device” includes,
28 but is not limited to, an implement, tool, equipment, impression,
29 laminated card, template, computer file, computer disk, electronic
30 device, hologram, laminated machine or computer hardware or
31 software.

32 (e) Any person who violates or proposes to violate this section
33 may be enjoined by any court of competent jurisdiction. Actions
34 for injunction under this section may be prosecuted by the Attorney
35 General, any district attorney, or any city attorney prosecuting on
36 behalf of the people of the State of California under Section
37 41803.5 of the Government Code in this state in the name of the
38 people of the State of California upon their own complaint or upon
39 the complaint of any person.

(f) Any person who violates the provisions of subdivision (a) who knows or reasonably should know that the deceptive identification document will be used for fraudulent purposes is guilty of a crime, and upon conviction therefor, shall be punished by imprisonment in the a county jail not to exceed one year, or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170. Any person who violates the provisions of subdivision (b) is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and a fine. Any document-making device may be seized by law enforcement and shall be forfeited to law enforcement or destroyed by order of the court upon a finding that the device was intended to be used to manufacture, alter, or authenticate a deceptive identification document. The court may make such a finding in the absence of a defendant for whom a bench warrant has been issued by the court.

SEC. 367. Section 484b of the Penal Code is amended to read:

484b. Any person who receives money for the purpose of obtaining or paying for services, labor, materials or equipment and willfully fails to apply such money for such purpose by either willfully failing to complete the improvements for which funds were provided or willfully failing to pay for services, labor, materials or equipment provided incident to such construction, and wrongfully diverts the funds to a use other than that for which the funds were received, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both that fine and that imprisonment if the amount diverted is in excess of two thousand three hundred fifty dollars (\$2,350). If the amount diverted is less than or equal to two thousand three hundred fifty dollars (\$2,350), the person shall be guilty of a misdemeanor.

SEC. 368. Section 484i of the Penal Code is amended to read:

484i. (a) Every person who possesses an incomplete access card, with intent to complete it without the consent of the issuer, is guilty of a misdemeanor.

(b) Every person who, with the intent to defraud, makes, alters, varies, changes, or modifies access card account information on

1 any part of an access card, including information encoded in a
2 magnetic stripe or other medium on the access card not directly
3 readable by the human eye, or who authorizes or consents to
4 alteration, variance, change, or modification of access card account
5 information by another, in a manner that causes transactions
6 initiated by that access card to be charged or billed to a person
7 other than the cardholder to whom the access card was issued, is
8 guilty of forgery.

9 (c) Every person who designs, makes, possesses, or traffics in
10 card making equipment or incomplete access cards with the intent
11 that the equipment or cards be used to make counterfeit access
12 cards, is punishable by imprisonment in a county jail for not more
13 than one year, or by imprisonment ~~in the state prison~~ pursuant to
14 subdivision (h) of Section 1170.

15 SEC. 369. Section 487b of the Penal Code is amended to read:
16 487b. Every person who converts real estate of the value of
17 two hundred fifty dollars (\$250) or more into personal property
18 by severance from the realty of another, and with felonious intent
19 to do so, steals, takes, and carries away that property is guilty of
20 grand theft and is punishable by imprisonment ~~in the state prison~~
21 pursuant to subdivision (h) of Section 1170.

22 SEC. 370. Section 487d of the Penal Code is amended to read:
23 487d. Every person who feloniously steals, takes, and carries
24 away, or attempts to take, steal, and carry from any mining claim,
25 tunnel, sluice, undercurrent, riffle box, or sulfurate machine,
26 another's gold dust, amalgam, or quicksilver is guilty of grand
27 theft and is punishable by imprisonment ~~in the state prison~~ pursuant
28 to subdivision (h) of Section 1170.

29 SEC. 371. Section 489 of the Penal Code is amended to read:
30 489. Grand theft is punishable as follows:

31 (a) When the grand theft involves the theft of a firearm, by
32 imprisonment in the state prison for 16 months, 2, or 3 years.

33 (b) In all other cases, by imprisonment in a county jail not
34 exceeding one year or ~~in the state prison~~ pursuant to subdivision
35 (h) of Section 1170.

36 SEC. 372. Section 496 of the Penal Code is amended to read:

37 496. (a) Every person who buys or receives any property that
38 has been stolen or that has been obtained in any manner
39 constituting theft or extortion, knowing the property to be so stolen
40 or obtained, or who conceals, sells, withholds, or aids in

1 concealing, selling, or withholding any property from the owner,
 2 knowing the property to be so stolen or obtained, shall be punished
 3 by imprisonment in a state prison, or in a county jail for not more
 4 than one year, *or imprisonment pursuant to subdivision (h) of*
 5 *Section 1170*. However, if the district attorney or the grand jury
 6 determines that this action would be in the interests of justice, the
 7 district attorney or the grand jury, as the case may be, may, if the
 8 value of the property does not exceed nine hundred fifty dollars
 9 (\$950), specify in the accusatory pleading that the offense shall
 10 be a misdemeanor, punishable only by imprisonment in a county
 11 jail not exceeding one year.

12 A principal in the actual theft of the property may be convicted
 13 pursuant to this section. However, no person may be convicted
 14 both pursuant to this section and of the theft of the same property.

15 (b) Every swap meet vendor, as defined in Section 21661 of the
 16 Business and Professions Code, and every person whose principal
 17 business is dealing in, or collecting, merchandise or personal
 18 property, and every agent, employee, or representative of that
 19 person, who buys or receives any property of a value in excess of
 20 nine hundred fifty dollars (\$950) that has been stolen or obtained
 21 in any manner constituting theft or extortion, under circumstances
 22 that should cause the person, agent, employee, or representative
 23 to make reasonable inquiry to ascertain that the person from whom
 24 the property was bought or received had the legal right to sell or
 25 deliver it, without making a reasonable inquiry, shall be punished
 26 by imprisonment in a state prison, or in a county jail for not more
 27 than one year, *or imprisonment pursuant to subdivision (h) of*
 28 *Section 1170*.

29 Every swap meet vendor, as defined in Section 21661 of the
 30 Business and Professions Code, and every person whose principal
 31 business is dealing in, or collecting, merchandise or personal
 32 property, and every agent, employee, or representative of that
 33 person, who buys or receives any property of a value of nine
 34 hundred fifty dollars (\$950) or less that has been stolen or obtained
 35 in any manner constituting theft or extortion, under circumstances
 36 that should cause the person, agent, employee, or representative
 37 to make reasonable inquiry to ascertain that the person from whom
 38 the property was bought or received had the legal right to sell or
 39 deliver it, without making a reasonable inquiry, shall be guilty of
 40 a misdemeanor.

1 (c) Any person who has been injured by a violation of
2 subdivision (a) or (b) may bring an action for three times the
3 amount of actual damages, if any, sustained by the plaintiff, costs
4 of suit, and reasonable attorney's fees.

5 (d) Notwithstanding Section 664, any attempt to commit any
6 act prohibited by this section, except an offense specified in the
7 accusatory pleading as a misdemeanor, is punishable by
8 imprisonment ~~in the state prison, or in a county jail~~ for not more
9 than one year, *or by imprisonment pursuant to subdivision (h) of*
10 *Section 1170.*

11 *SEC. 373. Section 496a of the Penal Code is amended to read:*

12 496a. (a) Every person who, being a dealer in or collector of
13 junk, metals or secondhand materials, or the agent, employee, or
14 representative of such dealer or collector, buys or receives any
15 wire, cable, copper, lead, solder, mercury, iron or brass which he
16 *or she* knows or reasonably should know is ordinarily used by or
17 ordinarily belongs to a railroad or other transportation, telephone,
18 telegraph, gas, water or electric light company or county, city, city
19 and county or other political subdivision of this state engaged in
20 furnishing public utility service without using due diligence to
21 ascertain that the person selling or delivering the same has a legal
22 right to do so, is guilty of criminally receiving ~~such~~ *that* property,
23 and is punishable, by imprisonment ~~in a state prison, or in a county~~
24 *jail* for not more than one year, *or by imprisonment pursuant to*
25 *subdivision (h) of Section 1170, or by a fine of not more than two*
26 *hundred fifty dollars (\$250), or by both* ~~such~~ *that* fine and
27 imprisonment.

28 (b) Any person buying or receiving material pursuant to
29 subdivision (a) shall obtain evidence of his *or her* identity from
30 the seller including, but not limited to, ~~such~~ *that* person's full name,
31 signature, address, driver's license number, vehicle license number,
32 and the license number of the vehicle delivering the material.

33 The record of the transaction shall include an appropriate
34 description of the material purchased and such record shall be
35 maintained pursuant to Section 21607 of the Business and
36 Professions Code.

37 *SEC. 374. Section 496d of the Penal Code is amended to read:*

38 496d. (a) Every person who buys or receives any motor
39 vehicle, as defined in Section 415 of the Vehicle Code, any trailer,
40 as defined in Section 630 of the Vehicle Code, any special

1 construction equipment, as defined in Section 565 of the Vehicle
2 Code, or any vessel, as defined in Section 21 of the Harbors and
3 Navigation Code, that has been stolen or that has been obtained
4 in any manner constituting theft or extortion, knowing the property
5 to be stolen or obtained, or who conceals, sells, withholds, or aids
6 in concealing, selling, or withholding any motor vehicle, trailer,
7 special construction equipment, or vessel from the owner, knowing
8 the property to be so stolen or obtained, shall be punished by
9 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
10 Section 1170 for 16 months or two or three years or a fine of not
11 more than ten thousand dollars (\$10,000), or both, or by
12 imprisonment in a county jail not to exceed one year or a fine of
13 not more than one thousand dollars (\$1,000), or both.

14 (b) For the purposes of this section, the terms “special
15 construction equipment” and “vessel” are limited to motorized
16 vehicles and vessels.

17 SEC. 375. Section 499c of the Penal Code is amended to read:

18 499c. (a) As used in this section:

19 (1) “Access” means to approach, a way or means of approaching,
20 nearing, admittance to, including to instruct, communicate with,
21 store information in, or retrieve information from a computer
22 system or computer network.

23 (2) “Article” means any object, material, device, or substance
24 or copy thereof, including any writing, record, recording, drawing,
25 sample, specimen, prototype, model, photograph, micro-organism,
26 blueprint, map, or tangible representation of a computer program
27 or information, including both human and computer readable
28 information and information while in transit.

29 (3) “Benefit” means gain or advantage, or anything regarded
30 by the beneficiary as gain or advantage, including benefit to any
31 other person or entity in whose welfare he or she is interested.

32 (4) “Computer system” means a machine or collection of
33 machines, one or more of which contain computer programs and
34 information, that performs functions, including, but not limited to,
35 logic, arithmetic, information storage and retrieval,
36 communications, and control.

37 (5) “Computer network” means an interconnection of two or
38 more computer systems.

39 (6) “Computer program” means an ordered set of instructions
40 or statements, and related information that, when automatically

1 executed in actual or modified form in a computer system, causes
2 it to perform specified functions.

3 (7) “Copy” means any facsimile, replica, photograph or other
4 reproduction of an article, and any note, drawing or sketch made
5 of or from an article.

6 (8) “Representing” means describing, depicting, containing,
7 constituting, reflecting or recording.

8 (9) “Trade secret” means information, including a formula,
9 pattern, compilation, program, device, method, technique, or
10 process, that:

11 (A) Derives independent economic value, actual or potential,
12 from not being generally known to the public or to other persons
13 who can obtain economic value from its disclosure or use; and

14 (B) Is the subject of efforts that are reasonable under the
15 circumstances to maintain its secrecy.

16 (b) Every person is guilty of theft who, with intent to deprive
17 or withhold the control of a trade secret from its owner, or with
18 an intent to appropriate a trade secret to his or her own use or to
19 the use of another, does any of the following:

20 (1) Steals, takes, carries away, or uses without authorization, a
21 trade secret.

22 (2) Fraudulently appropriates any article representing a trade
23 secret entrusted to him or her.

24 (3) Having unlawfully obtained access to the article, without
25 authority makes or causes to be made a copy of any article
26 representing a trade secret.

27 (4) Having obtained access to the article through a relationship
28 of trust and confidence, without authority and in breach of the
29 obligations created by that relationship, makes or causes to be
30 made, directly from and in the presence of the article, a copy of
31 any article representing a trade secret.

32 (c) Every person who promises, offers or gives, or conspires to
33 promise or offer to give, to any present or former agent, employee
34 or servant of another, a benefit as an inducement, bribe or reward
35 for conveying, delivering or otherwise making available an article
36 representing a trade secret owned by his or her present or former
37 principal, employer or master, to any person not authorized by the
38 owner to receive or acquire the trade secret and every present or
39 former agent, employee, or servant, who solicits, accepts, receives
40 or takes a benefit as an inducement, bribe or reward for conveying,

1 delivering or otherwise making available an article representing a
2 trade secret owned by his or her present or former principal,
3 employer or master, to any person not authorized by the owner to
4 receive or acquire the trade secret, shall be punished by
5 imprisonment ~~in the state prison, or in~~ a county jail not exceeding
6 one year, or by *imprisonment pursuant to subdivision (h) of Section*
7 *1170, or by* a fine not exceeding five thousand dollars (\$5,000),
8 or by both that fine and imprisonment.

9 (d) In a prosecution for a violation of this section, it shall be no
10 defense that the person returned or intended to return the article.

11 *SEC. 376. Section 499d of the Penal Code is amended to read:*

12 499d. Any person who operates or takes an aircraft not his
13 own, without the consent of the owner thereof, and with intent to
14 either permanently or temporarily deprive the owner thereof of his
15 title to or possession of such vehicle, whether with or without
16 intent to steal the same, or any person who is a party or accessory
17 to or an accomplice in any operation or unauthorized taking or
18 stealing is guilty of a felony, and upon conviction thereof shall be
19 punished by imprisonment ~~in the state prison, or in the~~ a county
20 jail for not more than one year or by *imprisonment pursuant to*
21 *subdivision (h) of Section 1170, or by* a fine of not more than ten
22 thousand dollars (\$10,000) or by both ~~such~~ *that* fine and
23 imprisonment.

24 *SEC. 377. Section 500 of the Penal Code is amended to read:*

25 500. (a) Any person who receives money for the actual or
26 purported purpose of transmitting the same or its equivalent to
27 foreign countries as specified in Section 1800.5 of the Financial
28 Code who fails to do at least one of the following acts unless
29 otherwise instructed by the customer is guilty of a misdemeanor
30 or felony as set forth in subdivision (b):

31 (1) Forward the money as represented to the customer within
32 10 days of receipt of the funds.

33 (2) Give instructions within 10 days of receipt of the customer's
34 funds, committing equivalent funds to the person designated by
35 the customer.

36 (3) Refund to the customer any money not forwarded as
37 represented within 10 days of the customer's written request for
38 a refund pursuant to subdivision (a) of Section 1810.5 of the
39 Financial Code.

(b) (1) If the total value of the funds received from the customer is less than nine hundred fifty dollars (\$950), the offense set forth in subdivision (a) is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) If the total value of the money received from the customer is nine hundred fifty dollars (\$950) or more, or if the total value of all moneys received by the person from different customers is nine hundred fifty dollars (\$950) or more, and the receipts were part of a common scheme or plan, the offense set forth in subdivision (a) is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for 16 months, 2, or 3 years, by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine.

SEC. 378. Section 502 of the Penal Code is amended to read:

502. (a) It is the intent of the Legislature in enacting this section to expand the degree of protection afforded to individuals, businesses, and governmental agencies from tampering, interference, damage, and unauthorized access to lawfully created computer data and computer systems. The Legislature finds and declares that the proliferation of computer technology has resulted in a concomitant proliferation of computer crime and other forms of unauthorized access to computers, computer systems, and computer data.

The Legislature further finds and declares that protection of the integrity of all types and forms of lawfully created computers, computer systems, and computer data is vital to the protection of the privacy of individuals as well as to the well-being of financial institutions, business concerns, governmental agencies, and others within this state that lawfully utilize those computers, computer systems, and data.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Access" means to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network.

(2) "Computer network" means any system that provides communications between one or more computer systems and input/output devices including, but not limited to, display terminals and printers connected by telecommunication facilities.

1 (3) “Computer program or software” means a set of instructions
2 or statements, and related data, that when executed in actual or
3 modified form, cause a computer, computer system, or computer
4 network to perform specified functions.

5 (4) “Computer services” includes, but is not limited to, computer
6 time, data processing, or storage functions, or other uses of a
7 computer, computer system, or computer network.

8 (5) “Computer system” means a device or collection of devices,
9 including support devices and excluding calculators that are not
10 programmable and capable of being used in conjunction with
11 external files, one or more of which contain computer programs,
12 electronic instructions, input data, and output data, that performs
13 functions including, but not limited to, logic, arithmetic, data
14 storage and retrieval, communication, and control.

15 (6) “Data” means a representation of information, knowledge,
16 facts, concepts, computer software, computer programs or
17 instructions. Data may be in any form, in storage media, or as
18 stored in the memory of the computer or in transit or presented on
19 a display device.

20 (7) “Supporting documentation” includes, but is not limited to,
21 all information, in any form, pertaining to the design, construction,
22 classification, implementation, use, or modification of a computer,
23 computer system, computer network, computer program, or
24 computer software, which information is not generally available
25 to the public and is necessary for the operation of a computer,
26 computer system, computer network, computer program, or
27 computer software.

28 (8) “Injury” means any alteration, deletion, damage, or
29 destruction of a computer system, computer network, computer
30 program, or data caused by the access, or the denial of access to
31 legitimate users of a computer system, network, or program.

32 (9) “Victim expenditure” means any expenditure reasonably
33 and necessarily incurred by the owner or lessee to verify that a
34 computer system, computer network, computer program, or data
35 was or was not altered, deleted, damaged, or destroyed by the
36 access.

37 (10) “Computer contaminant” means any set of computer
38 instructions that are designed to modify, damage, destroy, record,
39 or transmit information within a computer, computer system, or
40 computer network without the intent or permission of the owner

1 of the information. They include, but are not limited to, a group
2 of computer instructions commonly called viruses or worms, that
3 are self-replicating or self-propagating and are designed to
4 contaminate other computer programs or computer data, consume
5 computer resources, modify, destroy, record, or transmit data, or
6 in some other fashion usurp the normal operation of the computer,
7 computer system, or computer network.

8 (11) “Internet domain name” means a globally unique,
9 hierarchical reference to an Internet host or service, assigned
10 through centralized Internet naming authorities, comprising a series
11 of character strings separated by periods, with the rightmost
12 character string specifying the top of the hierarchy.

13 (c) Except as provided in subdivision (h), any person who
14 commits any of the following acts is guilty of a public offense:

15 (1) Knowingly accesses and without permission alters, damages,
16 deletes, destroys, or otherwise uses any data, computer, computer
17 system, or computer network in order to either (A) devise or
18 execute any scheme or artifice to defraud, deceive, or extort, or
19 (B) wrongfully control or obtain money, property, or data.

20 (2) Knowingly accesses and without permission takes, copies,
21 or makes use of any data from a computer, computer system, or
22 computer network, or takes or copies any supporting
23 documentation, whether existing or residing internal or external
24 to a computer, computer system, or computer network.

25 (3) Knowingly and without permission uses or causes to be used
26 computer services.

27 (4) Knowingly accesses and without permission adds, alters,
28 damages, deletes, or destroys any data, computer software, or
29 computer programs which reside or exist internal or external to a
30 computer, computer system, or computer network.

31 (5) Knowingly and without permission disrupts or causes the
32 disruption of computer services or denies or causes the denial of
33 computer services to an authorized user of a computer, computer
34 system, or computer network.

35 (6) Knowingly and without permission provides or assists in
36 providing a means of accessing a computer, computer system, or
37 computer network in violation of this section.

38 (7) Knowingly and without permission accesses or causes to be
39 accessed any computer, computer system, or computer network.

1 (8) Knowingly introduces any computer contaminant into any
2 computer, computer system, or computer network.

3 (9) Knowingly and without permission uses the Internet domain
4 name of another individual, corporation, or entity in connection
5 with the sending of one or more electronic mail messages, and
6 thereby damages or causes damage to a computer, computer
7 system, or computer network.

8 (d) (1) Any person who violates any of the provisions of
9 paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by
10 a fine not exceeding ten thousand dollars (\$10,000), or by
11 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
12 *Section 1170* for 16 months, or two or three years, or by both that
13 fine and imprisonment, or by a fine not exceeding five thousand
14 dollars (\$5,000), or by imprisonment in a county jail not exceeding
15 one year, or by both that fine and imprisonment.

16 (2) Any person who violates paragraph (3) of subdivision (c)
17 is punishable as follows:

18 (A) For the first violation that does not result in injury, and
19 where the value of the computer services used does not exceed
20 nine hundred fifty dollars (\$950), by a fine not exceeding five
21 thousand dollars (\$5,000), or by imprisonment in a county jail not
22 exceeding one year, or by both that fine and imprisonment.

23 (B) For any violation that results in a victim expenditure in an
24 amount greater than five thousand dollars (\$5,000) or in an injury,
25 or if the value of the computer services used exceeds nine hundred
26 fifty dollars (\$950), or for any second or subsequent violation, by
27 a fine not exceeding ten thousand dollars (\$10,000), or by
28 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
29 *Section 1170* for 16 months, or two or three years, or by both that
30 fine and imprisonment, or by a fine not exceeding five thousand
31 dollars (\$5,000), or by imprisonment in a county jail not exceeding
32 one year, or by both that fine and imprisonment.

33 (3) Any person who violates paragraph (6) or (7) of subdivision
34 (c) is punishable as follows:

35 (A) For a first violation that does not result in injury, an
36 infraction punishable by a fine not exceeding one thousand dollars
37 (\$1,000).

38 (B) For any violation that results in a victim expenditure in an
39 amount not greater than five thousand dollars (\$5,000), or for a
40 second or subsequent violation, by a fine not exceeding five

1 thousand dollars (\$5,000), or by imprisonment in a county jail not
2 exceeding one year, or by both that fine and imprisonment.

3 (C) For any violation that results in a victim expenditure in an
4 amount greater than five thousand dollars (\$5,000), by a fine not
5 exceeding ten thousand dollars (\$10,000), or by imprisonment in
6 ~~the state prison~~ *pursuant to subdivision (h) of Section 1170* for 16
7 months, or two or three years, or by both that fine and
8 imprisonment, or by a fine not exceeding five thousand dollars
9 (\$5,000), or by imprisonment in a county jail not exceeding one
10 year, or by both that fine and imprisonment.

11 (4) Any person who violates paragraph (8) of subdivision (c)
12 is punishable as follows:

13 (A) For a first violation that does not result in injury, a
14 misdemeanor punishable by a fine not exceeding five thousand
15 dollars (\$5,000), or by imprisonment in a county jail not exceeding
16 one year, or by both that fine and imprisonment.

17 (B) For any violation that results in injury, or for a second or
18 subsequent violation, by a fine not exceeding ten thousand dollars
19 (\$10,000), or by imprisonment in a county jail not exceeding one
20 year, or ~~in the state prison~~ *by imprisonment pursuant to subdivision*
21 *(h) of Section 1170*, or by both that fine and imprisonment.

22 (5) Any person who violates paragraph (9) of subdivision (c)
23 is punishable as follows:

24 (A) For a first violation that does not result in injury, an
25 infraction punishable by a fine not one thousand dollars.

26 (B) For any violation that results in injury, or for a second or
27 subsequent violation, by a fine not exceeding five thousand dollars
28 (\$5,000), or by imprisonment in a county jail not exceeding one
29 year, or by both that fine and imprisonment.

30 (e) (1) In addition to any other civil remedy available, the owner
31 or lessee of the computer, computer system, computer network,
32 computer program, or data who suffers damage or loss by reason
33 of a violation of any of the provisions of subdivision (c) may bring
34 a civil action against the violator for compensatory damages and
35 injunctive relief or other equitable relief. Compensatory damages
36 shall include any expenditure reasonably and necessarily incurred
37 by the owner or lessee to verify that a computer system, computer
38 network, computer program, or data was or was not altered,
39 damaged, or deleted by the access. For the purposes of actions
40 authorized by this subdivision, the conduct of an unemancipated

1 minor shall be imputed to the parent or legal guardian having
2 control or custody of the minor, pursuant to the provisions of
3 Section 1714.1 of the Civil Code.

4 (2) In any action brought pursuant to this subdivision the court
5 may award reasonable attorney's fees.

6 (3) A community college, state university, or academic
7 institution accredited in this state is required to include
8 computer-related crimes as a specific violation of college or
9 university student conduct policies and regulations that may subject
10 a student to disciplinary sanctions up to and including dismissal
11 from the academic institution. This paragraph shall not apply to
12 the University of California unless the Board of Regents adopts a
13 resolution to that effect.

14 (4) In any action brought pursuant to this subdivision for a
15 willful violation of the provisions of subdivision (c), where it is
16 proved by clear and convincing evidence that a defendant has been
17 guilty of oppression, fraud, or malice as defined in subdivision (c)
18 of Section 3294 of the Civil Code, the court may additionally award
19 punitive or exemplary damages.

20 (5) No action may be brought pursuant to this subdivision unless
21 it is initiated within three years of the date of the act complained
22 of, or the date of the discovery of the damage, whichever is later.

23 (f) This section shall not be construed to preclude the
24 applicability of any other provision of the criminal law of this state
25 which applies or may apply to any transaction, nor shall it make
26 illegal any employee labor relations activities that are within the
27 scope and protection of state or federal labor laws.

28 (g) Any computer, computer system, computer network, or any
29 software or data, owned by the defendant, that is used during the
30 commission of any public offense described in subdivision (c) or
31 any computer, owned by the defendant, which is used as a
32 repository for the storage of software or data illegally obtained in
33 violation of subdivision (c) shall be subject to forfeiture, as
34 specified in Section 502.01.

35 (h) (1) Subdivision (c) does not apply to punish any acts which
36 are committed by a person within the scope of his or her lawful
37 employment. For purposes of this section, a person acts within the
38 scope of his or her employment when he or she performs acts
39 which are reasonably necessary to the performance of his or her
40 work assignment.

(2) Paragraph (3) of subdivision (c) does not apply to penalize any acts committed by a person acting outside of his or her lawful employment, provided that the employee's activities do not cause an injury, as defined in paragraph (8) of subdivision (b), to the employer or another, or provided that the value of supplies or computer services, as defined in paragraph (4) of subdivision (b), which are used does not exceed an accumulated total of two hundred fifty dollars (\$250).

(i) No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs.

(j) For purposes of bringing a civil or a criminal action under this section, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

(k) In determining the terms and conditions applicable to a person convicted of a violation of this section the court shall consider the following:

(1) The court shall consider prohibitions on access to and use of computers.

(2) Except as otherwise required by law, the court shall consider alternate sentencing, including community service, if the defendant shows remorse and recognition of the wrongdoing, and an inclination not to repeat the offense.

SEC. 379. Section 506b of the Penal Code is amended to read:

506b. Any person who violates Section 2985.3 or 2985.4 of the Civil Code, relating to real property sales contracts, is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a the county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by both such that fine and imprisonment.

SEC. 380. Section 520 of the Penal Code is amended to read:

520. Every person who extorts any money or other property from another, under circumstances not amounting to robbery or carjacking, by means of force, or any threat, such as is mentioned in Section 519, shall be punished by imprisonment in the state

1 ~~prison pursuant to subdivision (h) of Section 1170~~ for two, three
2 or four years.

3 *SEC. 381. Section 529 of the Penal Code is amended to read:*

4 529. (a) Every person who falsely personates another in either
5 his or her private or official capacity, and in ~~such that~~ assumed
6 character ~~either~~ does any of the following, is punishable pursuant
7 to subdivision (b):

8 1.

9 (1) Becomes bail or surety for any party in any proceeding
10 whatever, before any court or officer authorized to take ~~such that~~
11 bail or surety;

12 2.

13 (2) Verifies, publishes, acknowledges, or proves, in the name
14 of another person, any written instrument, with intent that the same
15 may be recorded, delivered, or used as true; ~~or,~~

16 3.

17 (3) Does any other act whereby, if done by the person falsely
18 personated, he might, in any event, become liable to any suit or
19 prosecution, or to pay any sum of money, or to incur any charge,
20 forfeiture, or penalty, or whereby any benefit might accrue to the
21 party personating, or to any other person;

22 ~~Is punishable by~~

23 (b) By a fine not exceeding ten thousand dollars (\$10,000), or
24 by imprisonment in ~~the state prison, or in~~ a county jail not
25 exceeding one year, or imprisonment pursuant to subdivision (h)
26 of Section 1170, or by both ~~such that~~ fine and imprisonment.

27 *SEC. 382. Section 529a of the Penal Code is amended to read:*

28 529a. Every person who manufactures, produces, sells, offers,
29 or transfers to another any document purporting to be either a
30 certificate of birth or certificate of baptism, knowing such
31 document to be false or counterfeit and with the intent to deceive,
32 is guilty of a crime, and upon conviction therefor, shall be punished
33 by imprisonment in ~~the a~~ county jail not to exceed one year, or by
34 imprisonment in ~~the state prison pursuant to subdivision (h) of~~
35 Section 1170. Every person who offers, displays, or has in his or
36 her possession any false or counterfeit certificate of birth or
37 certificate of baptism, or any genuine certificate of birth which
38 describes a person then living or deceased, with intent to represent
39 himself or herself as another or to conceal his or her true identity,

1 is guilty of a crime, and upon conviction therefor, shall be punished
2 by imprisonment in the county jail not to exceed one year.

3 *SEC. 383. Section 530.5 of the Penal Code is amended to read:*

4 530.5. (a) Every person who willfully obtains personal
5 identifying information, as defined in subdivision (b) of Section
6 530.55, of another person, and uses that information for any
7 unlawful purpose, including to obtain, or attempt to obtain, credit,
8 goods, services, real property, or medical information without the
9 consent of that person, is guilty of a public offense, and upon
10 conviction therefor, shall be punished by a fine, by imprisonment
11 in a county jail not to exceed one year, or by both a fine and
12 imprisonment, or by imprisonment ~~in the state prison~~ *pursuant to*
13 *subdivision (h) of Section 1170.*

14 (b) In any case in which a person willfully obtains personal
15 identifying information of another person, uses that information
16 to commit a crime in addition to a violation of subdivision (a), and
17 is convicted of that crime, the court records shall reflect that the
18 person whose identity was falsely used to commit the crime did
19 not commit the crime.

20 (c) (1) Every person who, with the intent to defraud, acquires
21 or retains possession of the personal identifying information, as
22 defined in subdivision (b) of Section 530.55, of another person is
23 guilty of a public offense, and upon conviction therefor, shall be
24 punished by a fine, by imprisonment in a county jail not to exceed
25 one year, or by both a fine and imprisonment.

26 (2) Every person who, with the intent to defraud, acquires or
27 retains possession of the personal identifying information, as
28 defined in subdivision (b) of Section 530.55, of another person,
29 and who has previously been convicted of a violation of this
30 section, upon conviction therefor shall be punished by a fine, by
31 imprisonment in a county jail not to exceed one year, or by both
32 a fine and imprisonment, or by imprisonment ~~in the state prison~~
33 *pursuant to subdivision (h) of Section 1170.*

34 (3) Every person who, with the intent to defraud, acquires or
35 retains possession of the personal identifying information, as
36 defined in subdivision (b) of Section 530.55, of 10 or more other
37 persons is guilty of a public offense, and upon conviction therefor,
38 shall be punished by a fine, by imprisonment in a county jail not
39 to exceed one year, or by both a fine and imprisonment, or by

1 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
2 Section 1170.

3 (d) (1) Every person who, with the intent to defraud, sells,
4 transfers, or conveys the personal identifying information, as
5 defined in subdivision (b) of Section 530.55, of another person is
6 guilty of a public offense, and upon conviction therefor, shall be
7 punished by a fine, by imprisonment in a county jail not to exceed
8 one year, or by both a fine and imprisonment, or by imprisonment
9 ~~in the state prison~~ pursuant to subdivision (h) of Section 1170.

10 (2) Every person who, with actual knowledge that the personal
11 identifying information, as defined in subdivision (b) of Section
12 530.55, of a specific person will be used to commit a violation of
13 subdivision (a), sells, transfers, or conveys that same personal
14 identifying information is guilty of a public offense, and upon
15 conviction therefor, shall be punished by a fine, by imprisonment
16 ~~in the state prison~~ pursuant to subdivision (h) of Section 1170, or
17 by both a fine and imprisonment.

18 (e) Every person who commits mail theft, as defined in Section
19 1708 of Title 18 of the United States Code, is guilty of a public
20 offense, and upon conviction therefor shall be punished by a fine,
21 by imprisonment in a county jail not to exceed one year, or by both
22 a fine and imprisonment. Prosecution under this subdivision shall
23 not limit or preclude prosecution under any other provision of law,
24 including, but not limited to, subdivisions (a) to (c), inclusive, of
25 this section.

26 (f) An interactive computer service or access software provider,
27 as defined in subsection (f) of Section 230 of Title 47 of the United
28 States Code, shall not be liable under this section unless the service
29 or provider acquires, transfers, sells, conveys, or retains possession
30 of personal information with the intent to defraud.

31 SEC. 384. Section 532a of the Penal Code is amended to read:

32 532a. (1) Any person who shall knowingly make or cause to
33 be made, either directly or indirectly or through any agency
34 whatsoever, any false statement in writing, with intent that it shall
35 be relied upon, respecting the financial condition, or means or
36 ability to pay, of himself *or herself*, or any other person, firm or
37 corporation, in whom he *or she* is interested, or for whom he *or*
38 *she* is acting, for the purpose of procuring in any form whatsoever,
39 either the delivery of personal property, the payment of cash, the
40 making of a loan or credit, the extension of a credit, the execution

1 of a contract of guaranty or suretyship, the discount of an account
2 receivable, or the making, acceptance, discount, sale or indorsement
3 of a bill of exchange, or promissory note, for the benefit of either
4 himself *or herself* or of ~~such~~ *that* person, firm or corporation shall
5 be guilty of a public offense.

6 (2) Any person who knowing that a false statement in writing
7 has been made, respecting the financial condition or means or
8 ability to pay, of himself *or herself*, or a person, firm or corporation
9 in which he *or she* is interested, or for whom he *or she* is acting,
10 procures, upon the faith thereof, for the benefit either of himself
11 *or herself*, or of ~~such~~ *that* person, firm or corporation, either or
12 any of the things of benefit mentioned in the first subdivision of
13 this section shall be guilty of a public offense.

14 (3) Any person who knowing that a statement in writing has
15 been made, respecting the financial condition or means or ability
16 to pay of himself *or herself* or a person, firm or corporation, in
17 which he *or she* is interested, or for whom he *or she* is acting,
18 represents on a later day in writing that the statement theretofore
19 made, if then again made on said day, would be then true, when
20 in fact, said statement if then made would be false, and procures
21 upon the faith thereof, for the benefit either of himself *or herself*
22 or of ~~such~~ *that* person, firm or corporation either or any of the
23 things of benefit mentioned in the first subdivision of this section
24 shall be guilty of a public offense.

25 (4) Any person committing a public offense under subdivision
26 (1), (2), or (3) shall be guilty of a misdemeanor, punishable by a
27 fine of not more than one thousand dollars (\$1,000), or by
28 imprisonment in the county jail for not more than six months, or
29 by both ~~such~~ *that* fine and imprisonment. Any person who violates
30 the provisions of subdivision (1), (2), or (3), by using a fictitious
31 name, social security number, business name, or business address,
32 or by falsely representing himself or herself to be another person
33 or another business, is guilty of a felony and is punishable by a
34 fine not exceeding five thousand dollars (\$5,000) or by
35 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
36 *Section 1170*, or by both ~~such~~ *that* fine and imprisonment, or by
37 a fine not exceeding two thousand five hundred dollars (\$2,500)
38 or by imprisonment in the county jail not exceeding one year, or
39 by both such fine and imprisonment.

1 (5) This section shall not be construed to preclude the
2 applicability of any other provision of the criminal law of this state
3 which applies or may apply to any transaction.

4 *SEC. 385. Section 532f of the Penal Code is amended to read:*

5 532f. (a) A person commits mortgage fraud if, with the intent
6 to defraud, the person does any of the following:

7 (1) Deliberately makes any misstatement, misrepresentation, or
8 omission during the mortgage lending process with the intention
9 that it be relied on by a mortgage lender, borrower, or any other
10 party to the mortgage lending process.

11 (2) Deliberately uses or facilitates the use of any misstatement,
12 misrepresentation, or omission, knowing the same to contain a
13 misstatement, misrepresentation, or omission, during the mortgage
14 lending process with the intention that it be relied on by a mortgage
15 lender, borrower, or any other party to the mortgage lending
16 process.

17 (3) Receives any proceeds or any other funds in connection with
18 a mortgage loan closing that the person knew resulted from a
19 violation of paragraph (1) or (2) of this subdivision.

20 (4) Files or causes to be filed with the recorder of any county
21 in connection with a mortgage loan transaction any document the
22 person knows to contain a deliberate misstatement,
23 misrepresentation, or omission.

24 (b) An offense involving mortgage fraud shall not be based
25 solely on information lawfully disclosed pursuant to federal
26 disclosure laws, regulations, or interpretations related to the
27 mortgage lending process.

28 (c) (1) Notwithstanding any other provision of law, an order
29 for the production of any or all relevant records possessed by a
30 real estate recordholder in whatever form and however stored may
31 be issued by a judge upon a written ex parte application made
32 under penalty of perjury by a peace officer stating that there are
33 reasonable grounds to believe that the records sought are relevant
34 and material to an ongoing investigation of a felony fraud violation.

35 (2) The ex parte application shall specify with particularity the
36 records to be produced, which shall relate to a party or parties in
37 the criminal investigation.

38 (3) Relevant records may include, but are not limited to,
39 purchase contracts, loan applications, settlement statements, closing

1 statements, escrow instructions, payoff demands, disbursement
2 reports, or checks.

3 (4) The ex parte application and any subsequent judicial order
4 may be ordered sealed by the court upon a sufficient showing that
5 it is necessary for the effective continuation of the investigation.

6 (5) The records ordered to be produced shall be provided to the
7 peace officer applicant or his or her designee within a reasonable
8 time period after service of the order upon the real estate
9 recordholder.

10 (d) (1) Nothing in this section shall preclude the real estate
11 recordholder from notifying a customer of the receipt of the order
12 for production of records, unless a court orders the real estate
13 recordholder to withhold notification to the customer upon a
14 finding that this notice would impede the investigation.

15 (2) If a court has made an order to withhold notification to the
16 customer under this subdivision, the peace officer who or law
17 enforcement agency that obtained the records shall notify the
18 customer by delivering a copy of the ex parte order to the customer
19 within 10 days of the termination of the investigation.

20 (e) (1) Nothing in this section shall preclude the real estate
21 recordholder from voluntarily disclosing information or providing
22 records to law enforcement upon request.

23 (2) This section shall not preclude a real estate recordholder, in
24 its discretion, from initiating contact with, and thereafter
25 communicating with and disclosing records to, appropriate state
26 or local agencies concerning a suspected violation of any law.

27 (f) No real estate recordholder, or any officer, employee, or
28 agent of the real estate recordholder, shall be liable to any person
29 for either of the following:

30 (1) Disclosing information in response to an order pursuant to
31 this section.

32 (2) Complying with an order under this section not to disclose
33 to the customer the order, or the dissemination of information
34 pursuant to the order.

35 (g) Any records required to be produced pursuant to this section
36 shall be accompanied by an affidavit of a custodian of records of
37 the real estate recordholder or other qualified witness which states,
38 or includes in substance, all of the following:

39 (1) The affiant is the duly authorized custodian of the records
40 or other qualified witness and has authority to certify the records.

1 (2) The identity of the records.

2 (3) A description of the mode of preparation of the records.

3 (4) The records were prepared by the personnel of the business
4 in the regular course of business at or near the time of an act,
5 condition, or event.

6 (5) Any copies of records described in the order are true copies.

7 (h) A person who violates this section is guilty of a public
8 offense punishable by imprisonment ~~in the state prison or in a~~
9 county jail for not more than one year *or by imprisonment pursuant*
10 *to subdivision (h) of Section 1170.*

11 (i) For the purposes of this section, the following terms shall
12 have the following meanings:

13 (1) "Person" means any individual, partnership, firm,
14 association, corporation, limited liability company, or other legal
15 entity.

16 (2) "Mortgage lending process" means the process through
17 which a person seeks or obtains a mortgage loan, including, but
18 not limited to, solicitation, application, origination, negotiation of
19 terms, third-party provider services, underwriting, signing and
20 closing, and funding of the loan.

21 (3) "Mortgage loan" means a loan or agreement to extend credit
22 to a person that is secured by a deed of trust or other document
23 representing a security interest or lien upon any interest in real
24 property, including the renewal or refinancing of the loan.

25 (4) "Real estate recordholder" means any person, licensed or
26 unlicensed, that meets any of the following conditions:

27 (A) Is a title insurer that engages in the "business of title
28 insurance" as defined by Section 12340.3 of the Insurance Code,
29 an underwritten title company, or an escrow company.

30 (B) Functions as a broker or salesperson by engaging in any of
31 the type of acts set forth in Sections 10131, 10131.1, 10131.2,
32 10131.3, 10131.4, and 10131.6 of the Business and Professions
33 Code.

34 (C) Engages in the making or servicing of loans secured by real
35 property.

36 (j) Fraud involving a mortgage loan may only be prosecuted
37 under this section when the value of the alleged fraud meets the
38 threshold for grand theft as set out in subdivision (a) of Section
39 487.

40 *SEC. 386. Section 533 of the Penal Code is amended to read:*

1 533. Every person who, after once selling, bartering, or
2 disposing of any tract of land or town lot, or after executing any
3 bond or agreement for the sale of any land or town lot, again
4 willfully and with intent to defraud previous or subsequent
5 purchasers, sells, barter, or disposes of the same tract of land or
6 town lot, or any part thereof, or willfully and with intent to defraud
7 previous or subsequent purchasers, executes any bond or agreement
8 to sell, barter, or dispose of the same land or lot, or any part thereof,
9 to any other person for a valuable consideration, is punishable by
10 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
11 Section 1170.

12 SEC. 387. Section 535 of the Penal Code is amended to read:

13 535. Every person who obtains any money or property from
14 another, or obtains the signature of another to any written
15 instrument, the false making of which would be forgery, by means
16 of any false or fraudulent sale of property or pretended property,
17 by auction, or by any of the practices known as mock auctions, is
18 punishable by imprisonment ~~in the state prison, or in the~~ a county
19 jail not exceeding one year, or by imprisonment pursuant to
20 subdivision (h) of Section 1170, or by a fine not exceeding two
21 thousand dollars (\$2,000), or by both ~~such~~ that fine and
22 imprisonment, and, in addition, is disqualified for a period of three
23 years from acting as an auctioneer in this state.

24 SEC. 388. Section 537e of the Penal Code is amended to read:

25 537e. (a) Any person who knowingly buys, sells, receives,
26 disposes of, conceals, or has in his or her possession any personal
27 property from which the manufacturer's serial number,
28 identification number, electronic serial number, or any other
29 distinguishing number or identification mark has been removed,
30 defaced, covered, altered, or destroyed, is guilty of a public offense,
31 punishable as follows:

32 (1) If the value of the property does not exceed nine hundred
33 fifty dollars (\$950), by imprisonment in a county jail not exceeding
34 six months.

35 (2) If the value of the property exceeds nine hundred fifty dollars
36 (\$950), by imprisonment in a county jail not exceeding one year.

37 (3) If the property is an integrated computer chip or panel of a
38 value of nine hundred fifty dollars (\$950) or more, by
39 imprisonment ~~in the state prison~~ pursuant to subdivision (h) of

1 *Section 1170* for 16 months, or 2 or 3 years or by imprisonment
2 in a county jail not exceeding one year.

3 (b) For purposes of this subdivision, “personal property”
4 includes, but is not limited to, the following:

5 (1) Any television, radio, recorder, phonograph, telephone,
6 piano, or any other musical instrument or sound equipment.

7 (2) Any washing machine, sewing machine, vacuum cleaner,
8 or other household appliance or furnishings.

9 (3) Any typewriter, adding machine, dictaphone, or any other
10 office equipment or furnishings.

11 (4) Any computer, printed circuit, integrated chip or panel, or
12 other part of a computer.

13 (5) Any tool or similar device, including any technical or
14 scientific equipment.

15 (6) Any bicycle, exercise equipment, or any other entertainment
16 or recreational equipment.

17 (7) Any electrical or mechanical equipment, contrivance,
18 material, or piece of apparatus or equipment.

19 (8) Any clock, watch, watch case, or watch movement.

20 (9) Any vehicle or vessel, or any component part thereof.

21 (c) When property described in subdivision (a) comes into the
22 custody of a peace officer it shall become subject to the provision
23 of Chapter 12 (commencing with Section 1407) of Title 10 of Part
24 2, relating to the disposal of stolen or embezzled property. Property
25 subject to this section shall be considered stolen or embezzled
26 property for the purposes of that chapter, and prior to being
27 disposed of, shall have an identification mark imbedded or
28 engraved in, or permanently affixed to it.

29 (d) This section does not apply to those cases or instances where
30 any of the changes or alterations enumerated in subdivision (a)
31 have been customarily made or done as an established practice in
32 the ordinary and regular conduct of business, by the original
33 manufacturer, or by his or her duly appointed direct representative,
34 or under specific authorization from the original manufacturer.

35 *SEC. 389. Section 538.5 of the Penal Code is amended to read:*

36 538.5. Every person who transmits or causes to be transmitted
37 by means of wire, radio or television communication any words,
38 sounds, writings, signs, signals, or pictures for the purpose of
39 furthering or executing a scheme or artifice to obtain, from a public
40 utility, confidential, privileged, or proprietary information, trade

1 secrets, trade lists, customer records, billing records, customer
2 credit data, or accounting data by means of false or fraudulent
3 pretenses, representations, personations, or promises is guilty of
4 an offense punishable by imprisonment in the state prison pursuant
5 to subdivision (h) of Section 1170, or by imprisonment in the
6 county jail not exceeding one year.

7 *SEC. 390. Section 548 of the Penal Code is amended to read:*

8 548. (a) Every person who willfully injures, destroys, secretes,
9 abandons, or disposes of any property which at the time is insured
10 against loss or damage by theft, or embezzlement, or any casualty
11 with intent to defraud or prejudice the insurer, whether the property
12 is the property or in the possession of ~~such~~ that person or any other
13 person, is punishable by imprisonment in the state prison pursuant
14 to subdivision (h) of Section 1170 for two, three, or five years and
15 by a fine not exceeding fifty thousand dollars (\$50,000).

16 For purposes of this section, “casualty” does not include fire.

17 (b) Any person who violates subdivision (a) and who has a prior
18 conviction of the offense set forth in that subdivision, in Section
19 550 of this code, or in former Section 556 or former Section 1871.1
20 of the Insurance Code, shall receive a two-year enhancement for
21 each prior conviction in addition to the sentence provided under
22 subdivision (a). The existence of any fact which would subject a
23 person to a penalty enhancement shall be alleged in the information
24 or indictment and either admitted by the defendant in open court,
25 or found to be true by the jury trying the issue of guilt or by the
26 court where guilt is established by plea of guilty or nolo contendere
27 or by trial by the court sitting without a jury.

28 *SEC. 391. Section 549 of the Penal Code is amended to read:*

29 549. Any firm, corporation, partnership, or association, or any
30 person acting in his or her individual capacity, or in his or her
31 capacity as a public or private employee, who solicits, accepts, or
32 refers any business to or from any individual or entity with the
33 knowledge that, or with reckless disregard for whether, the
34 individual or entity for or from whom the solicitation or referral
35 is made, or the individual or entity who is solicited or referred,
36 intends to violate Section 550 of this code or Section 1871.4 of
37 the Insurance Code is guilty of a crime, punishable upon a first
38 conviction by imprisonment in the county jail for not more than
39 one year or by imprisonment in the state prison pursuant to
40 subdivision (h) of Section 1170 for 16 months, two years, or three

1 years, or by a fine not exceeding fifty thousand dollars (\$50,000)
2 or double the amount of the fraud, whichever is greater, or by both
3 that imprisonment and fine. A second or subsequent conviction is
4 punishable by imprisonment ~~in the state prison pursuant to~~
5 *subdivision (h) of Section 1170* or by ~~that~~ imprisonment ~~in the~~
6 ~~state prison~~ and a fine of fifty thousand dollars (\$50,000).
7 Restitution shall be ordered, including restitution for any medical
8 evaluation or treatment services obtained or provided. The court
9 shall determine the amount of restitution and the person or persons
10 to whom the restitution shall be paid.

11 *SEC. 392. Section 550 of the Penal Code is amended to read:*

12 550. (a) It is unlawful to do any of the following, or to aid,
13 abet, solicit, or conspire with any person to do any of the following:

14 (1) Knowingly present or cause to be presented any false or
15 fraudulent claim for the payment of a loss or injury, including
16 payment of a loss or injury under a contract of insurance.

17 (2) Knowingly present multiple claims for the same loss or
18 injury, including presentation of multiple claims to more than one
19 insurer, with an intent to defraud.

20 (3) Knowingly cause or participate in a vehicular collision, or
21 any other vehicular accident, for the purpose of presenting any
22 false or fraudulent claim.

23 (4) Knowingly present a false or fraudulent claim for the
24 payments of a loss for theft, destruction, damage, or conversion
25 of a motor vehicle, a motor vehicle part, or contents of a motor
26 vehicle.

27 (5) Knowingly prepare, make, or subscribe any writing, with
28 the intent to present or use it, or to allow it to be presented, in
29 support of any false or fraudulent claim.

30 (6) Knowingly make or cause to be made any false or fraudulent
31 claim for payment of a health care benefit.

32 (7) Knowingly submit a claim for a health care benefit that was
33 not used by, or on behalf of, the claimant.

34 (8) Knowingly present multiple claims for payment of the same
35 health care benefit with an intent to defraud.

36 (9) Knowingly present for payment any undercharges for health
37 care benefits on behalf of a specific claimant unless any known
38 overcharges for health care benefits for that claimant are presented
39 for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or five years, and by a fine not exceeding fifty thousand dollars (\$50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or five years, or by a fine not exceeding fifty thousand dollars (\$50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment

1 in a county jail not to exceed one year, by a fine of not more than
2 ten thousand dollars (\$10,000), or by both that imprisonment and
3 fine.

4 (B) When the claim or amount at issue is nine hundred fifty
5 dollars (\$950) or less, the offense is punishable by imprisonment
6 in a county jail not to exceed six months, or by a fine of not more
7 than one thousand dollars (\$1,000), or by both that imprisonment
8 and fine, unless the aggregate amount of the claims or amount at
9 issue exceeds nine hundred fifty dollars (\$950) in any
10 12-consecutive-month period, in which case the claims or amounts
11 may be charged as in subparagraph (A).

12 (3) Every person who violates paragraph (1), (2), (3), or (4) of
13 subdivision (b) shall be punished by imprisonment ~~in the state~~
14 ~~prison pursuant to subdivision (h) of Section 1170~~ for two, three,
15 or five years, or by a fine not exceeding fifty thousand dollars
16 (\$50,000) or double the amount of the fraud, whichever is greater,
17 or by both that imprisonment and fine, or by imprisonment in a
18 county jail not to exceed one year, or by a fine of not more than
19 ten thousand dollars (\$10,000), or by both that imprisonment and
20 fine.

21 (4) Restitution shall be ordered for a person convicted of
22 violating this section, including restitution for any medical
23 evaluation or treatment services obtained or provided. The court
24 shall determine the amount of restitution and the person or persons
25 to whom the restitution shall be paid.

26 (d) Notwithstanding any other provision of law, probation shall
27 not be granted to, nor shall the execution or imposition of a
28 sentence be suspended for, any adult person convicted of felony
29 violations of this section who previously has been convicted of
30 felony violations of this section or Section 548, or of Section
31 1871.4 of the Insurance Code, or former Section 556 of the
32 Insurance Code, or former Section 1871.1 of the Insurance Code
33 as an adult under charges separately brought and tried two or more
34 times. The existence of any fact that would make a person ineligible
35 for probation under this subdivision shall be alleged in the
36 information or indictment, and either admitted by the defendant
37 in an open court, or found to be true by the jury trying the issue
38 of guilt or by the court where guilt is established by plea of guilty
39 or nolo contendere or by trial by the court sitting without a jury.

1 Except when the existence of the fact was not admitted or found
2 to be true or the court finds that a prior felony conviction was
3 invalid, the court shall not strike or dismiss any prior felony
4 convictions alleged in the information or indictment.

5 This subdivision does not prohibit the adjournment of criminal
6 proceedings pursuant to Division 3 (commencing with Section
7 3000) or Division 6 (commencing with Section 6000) of the
8 Welfare and Institutions Code.

9 (e) Except as otherwise provided in subdivision (f), any person
10 who violates subdivision (a) or (b) and who has a prior felony
11 conviction of an offense set forth in either subdivision (a) or (b),
12 in Section 548, in Section 1871.4 of the Insurance Code, in former
13 Section 556 of the Insurance Code, or in former Section 1871.1
14 of the Insurance Code shall receive a two-year enhancement for
15 each prior felony conviction in addition to the sentence provided
16 in subdivision (c). The existence of any fact that would subject a
17 person to a penalty enhancement shall be alleged in the information
18 or indictment and either admitted by the defendant in open court,
19 or found to be true by the jury trying the issue of guilt or by the
20 court where guilt is established by plea of guilty or nolo contendere
21 or by trial by the court sitting without a jury. Any person who
22 violates this section shall be subject to appropriate orders of
23 restitution pursuant to Section 13967 of the Government Code.

24 (f) Any person who violates paragraph (3) of subdivision (a)
25 and who has two prior felony convictions for a violation of
26 paragraph (3) of subdivision (a) shall receive a five-year
27 enhancement in addition to the sentence provided in subdivision
28 (c). The existence of any fact that would subject a person to a
29 penalty enhancement shall be alleged in the information or
30 indictment and either admitted by the defendant in open court, or
31 found to be true by the jury trying the issue of guilt or by the court
32 where guilt is established by plea of guilty or nolo contendere or
33 by trial by the court sitting without a jury.

34 (g) Except as otherwise provided in Section 12022.7, any person
35 who violates paragraph (3) of subdivision (a) shall receive a
36 two-year enhancement for each person other than an accomplice
37 who suffers serious bodily injury resulting from the vehicular
38 collision or accident in a violation of paragraph (3) of subdivision
39 (a).

(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.

(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.

SEC. 393. Section 551 of the Penal Code is amended to read:

551. (a) It is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to offer to any insurance agent, broker, or adjuster any fee, commission, profit sharing, or other form of direct or indirect consideration for referring an insured to an automotive repair dealer or its employees or agents for vehicle repairs covered under a policyholder's automobile physical damage or automobile collision coverage, or to a contractor or its employees or agents for repairs to or replacement of a structure covered by a residential or commercial insurance policy.

(b) Except in cases in which the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer, it is unlawful for any automotive repair dealer, contractor, or employees or agents thereof to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering repairs to or replacement of a motor vehicle or residential or commercial structure. This subdivision does not prohibit an advertisement for repair or replacement services at a discount as long as the amount of the repair or replacement claim has been determined by the insurer and the repair or replacement services are performed in accordance with that determination or in accordance with provided estimates that are accepted by the insurer.

(c) A violation of this section is a public offense. Where the amount at issue exceeds nine hundred fifty dollars (\$950), the offense is punishable by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for 16 months, or 2 or 3 years,

1 by a fine of not more than ten thousand dollars (\$10,000), or by
2 both that imprisonment and fine; or by imprisonment in a county
3 jail not to exceed one year, by a fine of not more than one thousand
4 dollars (\$1,000), or by both that imprisonment and fine. In all other
5 cases, the offense is punishable by imprisonment in a county jail
6 not to exceed six months, by a fine of not more than one thousand
7 dollars (\$1,000), or by both that imprisonment and fine.

8 (d) Every person who, having been convicted of subdivision
9 (a) or (b), or Section 7027.3 or former Section 9884.75 of the
10 Business and Professions Code and having served a term therefor
11 in any penal institution or having been imprisoned therein as a
12 condition of probation for that offense, is subsequently convicted
13 of subdivision (a) or (b), upon a subsequent conviction of one of
14 those offenses, shall be punished by imprisonment ~~in the state~~
15 ~~prison pursuant to subdivision (h) of Section 1170~~ for 16 months,
16 or 2 or 3 years, by a fine of not more than ten thousand dollars
17 (\$10,000), or by both that imprisonment and fine; or by
18 imprisonment in a county jail not to exceed one year, by a fine of
19 not more than one thousand dollars (\$1,000), or by both that
20 imprisonment and fine.

21 (e) For purposes of this section:

22 (1) "Automotive repair dealer" means a person who, for
23 compensation, engages in the business of repairing or diagnosing
24 malfunctions of motor vehicles.

25 (2) "Contractor" has the same meaning as set forth in Section
26 7026 of the Business and Professions Code.

27 *SEC. 394. Section 560 of the Penal Code is amended to read:*

28 560. Any bailee, as defined in Section 7102 of the Uniform
29 Commercial Code, who issues or aids in issuing a document of
30 title, or any person who secures the issue by a bailee of a document
31 of title, or any person who negotiates or transfers for value a
32 document of title knowing that the goods for which ~~such that~~
33 document is issued have not been actually received by ~~such that~~
34 bailee or are not under his *or her* control at the time of issuing
35 ~~such that~~ receipt shall be guilty of a crime and upon conviction
36 shall be punished for each offense by imprisonment ~~in the state~~
37 ~~prison pursuant to subdivision (h) of Section 1170~~ or by a fine not
38 exceeding ten thousand dollars (\$10,000) or by both ~~that fine and~~
39 ~~imprisonment~~.

40 *SEC. 395. Section 560.4 of the Penal Code is amended to read:*

560.4. Any bailee, as defined in Section 7102 of the Uniform Commercial Code, who issues or aids in issuing a duplicate or additional negotiable document of title for goods knowing that a former negotiable document of title for the same goods or any part of them is outstanding and uncanceled without plainly placing upon the face thereof the word “duplicate,” except in cases of bills in a set and documents issued as substitutes for lost, stolen or destroyed documents, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 or by a fine not exceeding ten thousand dollars (\$10,000) or by both *that fine and imprisonment*.

SEC. 396. Section 566 of the Penal Code is amended to read:

566. It is a felony, punishable by a fine not exceeding one thousand five hundred dollars (\$1,500), or by imprisonment pursuant to subdivision (h) of Section 1170, or both, for an unauthorized person to possess or use, or to obliterate or destroy the brand registration upon, containers (including milk cases), cabinets, or other dairy equipment, which have a value in excess of nine hundred fifty dollars (\$950), when the containers, cabinets, or other dairy equipment are marked with a brand that is registered pursuant to Chapter 10 (commencing with Section 34501) of Part 1 of Division 15 of the Food and Agricultural Code. “Unauthorized person” shall have the meaning of that term as defined in Section 34564 of the Food and Agricultural Code.

SEC. 397. Section 570 of the Penal Code is amended to read:

570. An act of unlawful subleasing of a motor vehicle, as defined in Section 571, shall be punishable by imprisonment ~~in the state prison or in the a county jail~~ for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

SEC. 398. Section 577 of the Penal Code is amended to read:

577. Every person, being the master, owner or agent of any vessel, or officer or agent of any railroad, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that any merchandise of any description has been shipped on board any vessel, or delivered to any railroad, express or transportation company or other carrier, unless the same has been

1 so shipped or delivered, and is at the time actually under the control
2 of such carrier or the master, owner or agent of such vessel, or of
3 some officer or agent of ~~such that~~ company, to be forwarded as
4 expressed in ~~such that~~ bill of lading, receipt or voucher, is
5 punishable by imprisonment ~~in the state prison pursuant to~~
6 *subdivision (h) of Section 1170*, or by a fine not exceeding one
7 thousand dollars (\$1,000), or both.

8 *SEC. 399. Section 578 of the Penal Code is amended to read:*

9 578. Every person carrying on the business of a warehouseman,
10 wharfinger, or other depository of property, who issues any receipt,
11 bill of lading, or other voucher for any merchandise of any
12 description, which has not been actually received upon the premises
13 of ~~such that~~ person, and is not under his *or her* actual control at
14 the time of issuing such instrument, whether ~~such that~~ instrument
15 is issued to a person as being the owner of ~~such that~~ merchandise
16 or as security for any indebtedness, is punishable by imprisonment
17 ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or
18 by a fine not exceeding one thousand dollars (\$1,000), or both.

19 *SEC. 400. Section 580 of the Penal Code is amended to read:*

20 580. Every person mentioned in this chapter, who issues any
21 second or duplicate receipt or voucher, of a kind specified therein,
22 at a time while any former receipt or voucher for the merchandise
23 specified in ~~such that~~ second receipt is outstanding and uncanceled,
24 without writing across the face of the same the word "Duplicate,"
25 in a plain and legible manner, is punishable by imprisonment ~~in~~
26 ~~the state prison pursuant to subdivision (h) of Section 1170~~, or by
27 a fine not exceeding one thousand dollars (\$1,000), or both.

28 *SEC. 401. Section 581 of the Penal Code is amended to read:*

29 581. Every person mentioned in this chapter, who sells,
30 hypothecates, or pledges any merchandise for which any bill of
31 lading, receipt, or voucher has been issued by him *or her*, without
32 the consent in writing thereto of the person holding ~~such that~~ bill,
33 receipt, or voucher, is punishable by imprisonment ~~in the state~~
34 ~~prison pursuant to subdivision (h) of Section 1170~~, or by a fine not
35 exceeding one thousand dollars (\$1,000), or both.

36 *SEC. 402. Section 587 of the Penal Code is amended to read:*

37 587. Every person who maliciously; *does either of the following*
38 *is punishable by imprisonment pursuant to subdivision (h) of*
39 *Section 1170, or imprisonment in a county jail not exceeding one*
40 *year:*

1 ~~1.~~

2 (a) Removes, displaces, injures, or destroys any part of any
3 railroad, whether for steam or horse cars, or any track of any
4 railroad, or any branch or branchway, switch, turnout, bridge,
5 viaduct, culvert, embankment, station house, or other structure or
6 fixture, or any part thereof, attached to or connected with any
7 railroad; ~~or,~~

8 ~~2.~~

9 (b) Places any obstruction upon the rails or track of any railroad,
10 or of any switch, branch, branchway, or turnout connected with
11 any railroad;

12 ~~Is punishable by imprisonment in the state prison, or in the~~
13 ~~county jail not exceeding one year.~~

14 *SEC. 403. Section 587.1 of the Penal Code is amended to read:*

15 587.1. (a) Every person who maliciously moves or causes to
16 be moved, without authorization, any locomotive, is guilty of a
17 misdemeanor punishable by imprisonment in the county jail not
18 exceeding one year.

19 (b) Every person who maliciously moves or causes to be moved,
20 without authorization, any locomotive, when the moving creates
21 a substantial likelihood of causing personal injury or death to
22 another, is guilty of a public offense punishable by imprisonment
23 ~~in the state prison, or in the~~ a county jail not exceeding one year
24 ~~or by imprisonment pursuant to subdivision (h) of Section 1170.~~

25 *SEC. 404. Section 591 of the Penal Code is amended to read:*

26 591. A person who unlawfully and maliciously takes down,
27 removes, injures, or obstructs any line of telegraph, telephone, or
28 cable television, or any other line used to conduct electricity, or
29 any part thereof, or appurtenances or apparatus connected
30 therewith, or severs any wire thereof, or makes any unauthorized
31 connection with any line, other than a telegraph, telephone, or
32 cable television line, used to conduct electricity, or any part thereof,
33 or appurtenances or apparatus connected therewith, is punishable
34 ~~by imprisonment in the state prison pursuant to subdivision (h) of~~
35 *Section 1170*, or by a fine not exceeding five hundred dollars
36 (\$500), or imprisonment in the county jail not exceeding one year.

37 *SEC. 405. Section 593 of the Penal Code is amended to read:*

38 593. Every person who unlawfully and maliciously takes down,
39 removes, injures, interferes with, or obstructs any line erected or
40 maintained by proper authority for the purpose of transmitting

1 electricity for light, heat, or power, or any part thereof, or any
2 insulator or crossarm, appurtenance or apparatus connected
3 therewith, or severs or in any way interferes with any wire, cable,
4 or current thereof, is punishable by imprisonment in the state prison
5 pursuant to subdivision (h) of Section 1170, or by fine not
6 exceeding one thousand dollars (\$1,000), or imprisonment in the
7 county jail not exceeding one year.

8 *SEC. 406. Section 594 of the Penal Code is amended to read:*

9 594. (a) Every person who maliciously commits any of the
10 following acts with respect to any real or personal property not his
11 or her own, in cases other than those specified by state law, is
12 guilty of vandalism:

13 (1) Defaces with graffiti or other inscribed material.

14 (2) Damages.

15 (3) Destroys.

16 Whenever a person violates this subdivision with respect to real
17 property, vehicles, signs, fixtures, furnishings, or property
18 belonging to any public entity, as defined by Section 811.2 of the
19 Government Code, or the federal government, it shall be a
20 permissive inference that the person neither owned the property
21 nor had the permission of the owner to deface, damage, or destroy
22 the property.

23 (b) (1) If the amount of defacement, damage, or destruction is
24 four hundred dollars (\$400) or more, vandalism is punishable by
25 imprisonment in the state prison pursuant to subdivision (h) of
26 Section 1170 or in a county jail not exceeding one year, or by a
27 fine of not more than ten thousand dollars (\$10,000), or if the
28 amount of defacement, damage, or destruction is ten thousand
29 dollars (\$10,000) or more, by a fine of not more than fifty thousand
30 dollars (\$50,000), or by both that fine and imprisonment.

31 (2) (A) If the amount of defacement, damage, or destruction is
32 less than four hundred dollars (\$400), vandalism is punishable by
33 imprisonment in a county jail not exceeding one year, or by a fine
34 of not more than one thousand dollars (\$1,000), or by both that
35 fine and imprisonment.

36 (B) If the amount of defacement, damage, or destruction is less
37 than four hundred dollars (\$400), and the defendant has been
38 previously convicted of vandalism or affixing graffiti or other
39 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,
40 or 640.7, vandalism is punishable by imprisonment in a county

jail for not more than one year, or by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment.

(c) Upon conviction of any person under this section for acts of vandalism consisting of defacing property with graffiti or other inscribed materials, the court shall, when appropriate and feasible, in addition to any punishment imposed under subdivision (b), order the defendant to clean up, repair, or replace the damaged property himself or herself, or order the defendant, and his or her parents or guardians if the defendant is a minor, to keep the damaged property or another specified property in the community free of graffiti for up to one year. Participation of a parent or guardian is not required under this subdivision if the court deems this participation to be detrimental to the defendant, or if the parent or guardian is a single parent who must care for young children. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.

(d) If a minor is personally unable to pay a fine levied for acts prohibited by this section, the parent of that minor shall be liable for payment of the fine. A court may waive payment of the fine, or any part thereof, by the parent upon a finding of good cause.

(e) As used in this section, the term “graffiti or other inscribed material” includes any unauthorized inscription, word, figure, mark, or design, that is written, marked, etched, scratched, drawn, or painted on real or personal property.

(f) The court may order any person ordered to perform community service or graffiti removal pursuant to paragraph (1) of subdivision (c) to undergo counseling.

(g) This section shall become operative on January 1, 2002.

SEC. 407. Section 594.3 of the Penal Code is amended to read:

594.3. (a) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the a county jail for not exceeding one year *or imprisonment pursuant to subdivision (h) of Section 1170.*

(b) Any person who knowingly commits any act of vandalism to a church, synagogue, mosque, temple, building owned and occupied by a religious educational institution, or other place

1 primarily used as a place of worship where religious services are
2 regularly conducted or a cemetery, which is shown to have been
3 a hate crime and to have been committed for the purpose of
4 intimidating and deterring persons from freely exercising their
5 religious beliefs, is guilty of a felony punishable by imprisonment
6 ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

7 (c) For purposes of this section, “hate crime” has the same
8 meaning as Section 422.55.

9 *SEC. 408. Section 594.35 of the Penal Code is amended to*
10 *read:*

11 594.35. Every person is guilty of a crime and punishable by
12 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
13 *Section 1170* or by imprisonment in a county jail for not exceeding
14 one year, who maliciously does any of the following:

15 (a) Destroys, cuts, mutilates, effaces, or otherwise injures, tears
16 down, or removes any tomb, monument, memorial, or marker in
17 a cemetery, or any gate, door, fence, wall, post or railing, or any
18 inclosure for the protection of a cemetery or mortuary or any
19 property in a cemetery or mortuary.

20 (b) Obliterates any grave, vault, niche, or crypt.

21 (c) Destroys, cuts, breaks or injures any mortuary building or
22 any building, statuary, or ornamentation within the limits of a
23 cemetery.

24 (d) Disturbs, obstructs, detains or interferes with any person
25 carrying or accompanying human remains to a cemetery or funeral
26 establishment, or engaged in a funeral service, or an interment.

27 *SEC. 409. Section 594.4 of the Penal Code is amended to read:*

28 594.4. (a) Any person who willfully and maliciously injects
29 into or throws upon, or otherwise defaces, damages, destroys, or
30 contaminates, any structure with butyric acid, or any other similar
31 noxious or caustic chemical or substance, is guilty of a public
32 offense, punishable by imprisonment ~~in the state prison pursuant~~
33 *to subdivision (h) of Section 1170* or in a county jail *not exceeding*
34 *6 months*, by a fine as specified in subdivision (b), or by both that
35 imprisonment and fine.

36 (b) (1) If the amount of the defacement, damage, destruction,
37 or contamination is fifty thousand dollars (\$50,000) or more, by
38 a fine of not more than fifty thousand dollars (\$50,000).

39 (2) If the amount of the defacement, damage, destruction, or
40 contamination is five thousand dollars (\$5,000) or more, but less

1 than fifty thousand dollars (\$50,000), by a fine of not more than
2 ten thousand dollars (\$10,000).

3 (3) If the amount of defacement, damage, destruction, or
4 contamination is nine hundred fifty dollars (\$950) or more, but
5 less than five thousand dollars (\$5,000), by a fine of not more than
6 five thousand dollars (\$5,000).

7 (4) If the amount of the defacement, damage, destruction, or
8 contamination is less than nine hundred fifty dollars (\$950), by a
9 fine of not more than one thousand dollars (\$1,000).

10 (c) For purposes of this section, “structure” includes any house
11 or other building being used at the time of the offense for a
12 dwelling or for commercial purposes.

13 *SEC. 410. Section 597 of the Penal Code is amended to read:*

14 597. (a) Except as provided in subdivision (c) of this section
15 or Section 599c, every person who maliciously and intentionally
16 maims, mutilates, tortures, or wounds a living animal, or
17 maliciously and intentionally kills an animal, is guilty of an offense
18 punishable by imprisonment ~~in the state prison pursuant to~~
19 *subdivision (h) of Section 1170*, or by a fine of not more than
20 twenty thousand dollars (\$20,000), or by both the fine and
21 imprisonment, or, ~~alternatively~~, by imprisonment in a county jail
22 for not more than one year, or by a fine of not more than twenty
23 thousand dollars (\$20,000), or by both ~~the~~ *that* fine and
24 imprisonment.

25 (b) Except as otherwise provided in subdivision (a) or (c), every
26 person who overdrives, overloads, drives when overloaded,
27 overworks, tortures, torments, deprives of necessary sustenance,
28 drink, or shelter, cruelly beats, mutilates, or cruelly kills any
29 animal, or causes or procures any animal to be so overdriven,
30 overloaded, driven when overloaded, overworked, tortured,
31 tormented, deprived of necessary sustenance, drink, shelter, or to
32 be cruelly beaten, mutilated, or cruelly killed; and whoever, having
33 the charge or custody of any animal, either as owner or otherwise,
34 subjects any animal to needless suffering, or inflicts unnecessary
35 cruelty upon the animal, or in any manner abuses any animal, or
36 fails to provide the animal with proper food, drink, or shelter or
37 protection from the weather, or who drives, rides, or otherwise
38 uses the animal when unfit for labor, is, for every such offense,
39 guilty of a crime punishable as a misdemeanor ~~or as a felony or~~
40 ~~alternatively punishable as a misdemeanor or a felony~~ by

1 *imprisonment pursuant to subdivision (h) of Section 1170, or by*
2 *that imprisonment* and by a fine of not more than twenty thousand
3 dollars (\$20,000).

4 (c) Every person who maliciously and intentionally maims,
5 mutilates, or tortures any mammal, bird, reptile, amphibian, or fish
6 as described in subdivision (d), is guilty of an offense punishable
7 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
8 *Section 1170*, or by a fine of not more than twenty thousand dollars
9 (\$20,000), or by both the fine and imprisonment, or, ~~alternatively,~~
10 by imprisonment in the county jail for not more than one year, *or*
11 by a fine of not more than twenty thousand dollars (\$20,000), or
12 by both ~~the~~ *that* fine and imprisonment.

13 (d) Subdivision (c) applies to any mammal, bird, reptile,
14 amphibian, or fish which is a creature described as follows:

15 (1) Endangered species or threatened species as described in
16 Chapter 1.5 (commencing with Section 2050) of Division 3 of the
17 Fish and Game Code.

18 (2) Fully protected birds described in Section 3511 of the Fish
19 and Game Code.

20 (3) Fully protected mammals described in Chapter 8
21 (commencing with Section 4700) of Part 3 of Division 4 of the
22 Fish and Game Code.

23 (4) Fully protected reptiles and amphibians described in Chapter
24 2 (commencing with Section 5050) of Division 5 of the Fish and
25 Game Code.

26 (5) Fully protected fish as described in Section 5515 of the Fish
27 and Game Code.

28 This subdivision does not supersede or affect any provisions of
29 law relating to taking of the described species, including, but not
30 limited to, Section 12008 of the Fish and Game Code.

31 (e) For the purposes of subdivision (c), each act of malicious
32 and intentional maiming, mutilating, or torturing a separate
33 specimen of a creature described in subdivision (d) is a separate
34 offense. If any person is charged with a violation of subdivision
35 (c), the proceedings shall be subject to Section 12157 of the Fish
36 and Game Code.

37 (f) (1) Upon the conviction of a person charged with a violation
38 of this section by causing or permitting an act of cruelty, as defined
39 in Section 599b, all animals lawfully seized and impounded with
40 respect to the violation by a peace officer, officer of a humane

society, or officer of a pound or animal regulation department of a public agency shall be adjudged by the court to be forfeited and shall thereupon be awarded to the impounding officer for proper disposition. A person convicted of a violation of this section by causing or permitting an act of cruelty, as defined in Section 599b, shall be liable to the impounding officer for all costs of impoundment from the time of seizure to the time of proper disposition.

(2) Mandatory seizure or impoundment shall not apply to animals in properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university of this state.

(g) Notwithstanding any other provision of law, if a defendant is granted probation for a conviction under this section, the court shall order the defendant to pay for, and successfully complete, counseling, as determined by the court, designed to evaluate and treat behavior or conduct disorders. If the court finds that the defendant is financially unable to pay for that counseling, the court may develop a sliding fee schedule based upon the defendant's ability to pay. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee if the defendant has the ability to pay the nominal fee. County mental health departments or Medi-Cal shall be responsible for the costs of counseling required by this section only for those persons who meet the medical necessity criteria for mental health managed care pursuant to Section 1830.205 of Title 7 of the California Code of Regulations or the targeted population criteria specified in Section 5600.3 of the Welfare and Institutions Code. The counseling specified in this subdivision shall be in addition to any other terms and conditions of probation, including any term of imprisonment and any fine. This provision specifies a mandatory additional term of probation and is not to be utilized as an alternative in lieu of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ or county jail when such a sentence is otherwise appropriate. If the court does not order custody as a condition of probation for a conviction under this section, the court shall specify on the court record the reason or reasons for not ordering custody. This subdivision shall not apply to cases involving police dogs or horses as described in Section 600.

SEC. 411. Section 597.5 of the Penal Code is amended to read:

1 597.5. (a) Any person who does any of the following is guilty
2 of a felony and is punishable by imprisonment ~~in the state prison~~
3 *pursuant to subdivision (h) of Section 1170* for 16 months, or two
4 or three years, or by a fine not to exceed fifty thousand dollars
5 (\$50,000), or by both that fine and imprisonment:

6 (1) Owns, possesses, keeps, or trains any dog, with the intent
7 that the dog shall be engaged in an exhibition of fighting with
8 another dog.

9 (2) For amusement or gain, causes any dog to fight with another
10 dog, or causes any dogs to injure each other.

11 (3) Permits any act in violation of paragraph (1) or (2) to be
12 done on any premises under his or her charge or control, or aids
13 or abets that act.

14 (b) Any person who is knowingly present, as a spectator, at any
15 place, building, or tenement where preparations are being made
16 for an exhibition of the fighting of dogs, with the intent to be
17 present at those preparations, or is knowingly present at that
18 exhibition or at any other fighting or injuring as described in
19 paragraph (2) of subdivision (a), with the intent to be present at
20 that exhibition, fighting, or injuring, is guilty of an offense
21 punishable by imprisonment in a county jail not to exceed one
22 year, or by a fine not to exceed five thousand dollars (\$5,000), or
23 by both that imprisonment and fine.

24 (c) Nothing in this section shall prohibit any of the following:

25 (1) The use of dogs in the management of livestock, as defined
26 by Section 14205 of the Food and Agricultural Code, by the owner
27 of the livestock or his or her employees or agents or other persons
28 in lawful custody thereof.

29 (2) The use of dogs in hunting as permitted by the Fish and
30 Game Code, including, but not limited to, Sections 4002 and 4756,
31 and by the rules and regulations of the Fish and Game Commission.

32 (3) The training of dogs or the use of equipment in the training
33 of dogs for any purpose not prohibited by law.

34 *SEC. 412. Section 598c of the Penal Code is amended to read:*

35 598c. (a) Notwithstanding any other provision of law, it is
36 unlawful for any person to possess, to import into or export from
37 the state, or to sell, buy, give away, hold, or accept any horse with
38 the intent of killing, or having another kill, that horse, if that person
39 knows or should have known that any part of that horse will be
40 used for human consumption.

1 (b) For purposes of this section, ~~“horse”~~ “horse” means any
2 equine, including any horse, pony, burro, or mule.

3 (c) Violation of this section is a felony punishable by
4 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
5 *Section 1170* for 16 months, or two or three years.

6 (d) It is not the intent of this section to affect any commonly
7 accepted commercial, noncommercial, recreational, or sporting
8 activity that relates to horses.

9 (e) It is not the intent of this section to affect any existing law
10 that relates to horse taxation or zoning.

11 *SEC. 413. Section 598d of the Penal Code is amended to read:*

12 598d. (a) Notwithstanding any other provision of law,
13 horsemeat may not be offered for sale for human consumption.
14 No restaurant, cafe, or other public eating place may offer
15 horsemeat for human consumption.

16 (b) Violation of this section is a misdemeanor punishable by a
17 fine of not more than one thousand dollars (\$1,000), or by
18 confinement in jail for not less than 30 days nor more than two
19 years, or by both that fine and confinement.

20 (c) A second or subsequent offense under this section is
21 punishable by imprisonment ~~in the state prison pursuant to~~
22 *subdivision (h) of Section 1170* for not less than two years nor
23 more than five years.

24 *SEC. 414. Section 600 of the Penal Code is amended to read:*

25 600. (a) Any person who willfully and maliciously and with
26 no legal justification strikes, beats, kicks, cuts, stabs, shoots with
27 a firearm, administers any poison or other harmful or stupefying
28 substance to, or throws, hurls, or projects at, or places any rock,
29 object, or other substance which is used in such a manner as to be
30 capable of producing injury and likely to produce injury, on or in
31 the path of, any horse being used by, or any dog under the
32 supervision of, any peace officer in the discharge or attempted
33 discharge of his or her duties, is guilty of a public offense. If the
34 injury inflicted is a serious injury, as defined in subdivision (c),
35 the person shall be punished by imprisonment ~~in the state prison~~
36 *pursuant to subdivision (h) of Section 1170* for 16 months, two or
37 three years, or in a county jail for not exceeding one year, or by a
38 fine not exceeding two thousand dollars (\$2,000), or by both a fine
39 and imprisonment. If the injury inflicted is not a serious injury,
40 the person shall be punished by imprisonment in the county jail

1 for not exceeding one year, or by a fine not exceeding one thousand
2 dollars (\$1,000), or by both a fine and imprisonment.

3 (b) Any person who willfully and maliciously and with no legal
4 justification interferes with or obstructs any horse or dog being
5 used by any peace officer in the discharge or attempted discharge
6 of his or her duties by frightening, teasing, agitating, harassing, or
7 hindering the horse or dog shall be punished by imprisonment in
8 a county jail for not exceeding one year, or by a fine not exceeding
9 one thousand dollars (\$1,000), or by both a fine and imprisonment.

10 (c) Any person who, in violation of this section, and with intent
11 to inflict ~~such~~ *that* injury or death, personally causes the death,
12 destruction, or serious physical injury including bone fracture, loss
13 or impairment of function of any bodily member, wounds requiring
14 extensive suturing, or serious crippling, of any horse or dog, shall,
15 upon conviction of a felony under this section, in addition and
16 consecutive to the punishment prescribed for the felony, be
17 punished by an additional term of imprisonment ~~in the state prison~~
18 *pursuant to subdivision (h) of Section 1170* for one year.

19 (d) Any person who, in violation of this section, and with the
20 intent to inflict ~~such~~ *that* injury, personally causes great bodily
21 injury, as defined in Section 12022.7, to any person not an
22 accomplice, shall, upon conviction of a felony under this section,
23 in addition and consecutive to the punishment prescribed for the
24 felony, be punished by an additional term of imprisonment ~~in the~~
25 ~~state prison~~ *pursuant to subdivision (h) of Section 1170* for two
26 years unless the conduct described in this subdivision is an element
27 of any other offense of which the person is convicted or receives
28 an enhancement under Section 12022.7.

29 (e) In any case in which a defendant is convicted of a violation
30 of this section, the defendant shall be ordered to make restitution
31 to the agency owning the animal and employing the peace officer
32 for any veterinary bills, replacement costs of the animal if it is
33 disabled or killed, and the salary of the peace officer for the period
34 of time his or her services are lost to the agency.

35 *SEC. 415. Section 601 of the Penal Code is amended to read:*

36 601. (a) Any person is guilty of trespass who makes a credible
37 threat to cause serious bodily injury, as defined in subdivision (a)
38 of Section 417.6, to another person with the intent to place that
39 other person in reasonable fear for his or her safety, or the safety

1 of his or her immediate family, as defined in subdivision (l) of
2 Section 646.9, and who does any of the following:

3 (1) Within 30 days of the threat, unlawfully enters into the
4 residence or real property contiguous to the residence of the person
5 threatened without lawful purpose, and with the intent to execute
6 the threat against the target of the threat.

7 (2) Within 30 days of the threat, knowing that the place is the
8 threatened person's workplace, unlawfully enters into the
9 workplace of the person threatened and carries out an act or acts
10 to locate the threatened person within the workplace premises
11 without lawful purpose, and with the intent to execute the threat
12 against the target of the threat.

13 (b) Subdivision (a) shall not apply if the residence, real property,
14 or workplace described in paragraph (1) or (2) that is entered is
15 the residence, real property, or workplace of the person making
16 the threat.

17 (c) This section shall not apply to any person who is engaged
18 in labor union activities which are permitted to be carried out on
19 the property by the California Agricultural Labor Relations Act,
20 Part 3.5 (commencing with Section 1140) of Division 2 of the
21 Labor Code, or by the National Labor Relations Act.

22 (d) A violation of this section shall be punishable by
23 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
24 *Section 1170*, or by imprisonment in a county jail not exceeding
25 one year, or by a fine not exceeding two thousand dollars (\$2,000),
26 or by both ~~a~~ *that* fine and imprisonment.

27 *SEC. 416. Section 610 of the Penal Code is amended to read:*

28 610. Every person who unlawfully masks, alters, or removes
29 any light or signal, or willfully exhibits any light or signal, with
30 intent to bring any vessel into danger, is punishable by
31 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
32 *Section 1170*.

33 *SEC. 417. Section 617 of the Penal Code is amended to read:*

34 617. Every person who maliciously mutilates, tears, defaces,
35 obliterates, or destroys any written instrument, the property of
36 another, the false making of which would be forgery, is punishable
37 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
38 *Section 1170*.

39 *SEC. 418. Section 620 of the Penal Code is amended to read:*

620. Every person who willfully alters the purport, effect, or meaning of a telegraphic or telephonic message to the injury of another, is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or in ~~the~~ a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both ~~such~~ that fine and imprisonment.

SEC. 419. Section 621 of the Penal Code is amended to read:

621. Every person who maliciously destroys, cuts, breaks, mutilates, effaces, or otherwise injures, tears down, or removes any law enforcement memorial or firefighter's memorial is guilty of a crime punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ or by imprisonment in ~~the~~ a county jail for less than one year.

SEC. 420. Section 625b of the Penal Code is amended to read:

625b. (a) Every person who willfully injures or tampers with any aircraft or the contents or parts thereof, or removes any part of or from an aircraft without the consent of the owner, and every person who, with intent to commit any malicious mischief, injury or other crime, climbs into or upon an aircraft or attempts to manipulate any of the controls, starting mechanism, brakes or other mechanism or device of an aircraft while it is at rest and unattended, or who sets in motion any aircraft while it is at rest and unattended, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than six months or by a fine of not more than one thousand dollars (\$1,000), or by both ~~such~~ that fine and imprisonment.

(b) Every person who willfully and maliciously damages, injures, or destroys any aircraft, or the contents or any part thereof, in such a manner as to render the aircraft unsafe for those flight operations for which it is designed and equipped is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

SEC. 421. Section 626.9 of the Penal Code, as amended by Section 146 of Chapter 83 of the Statutes of 1999, is amended to read:

626.9. (a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

1 (b) Any person who possesses a firearm in a place that the
2 person knows, or reasonably should know, is a school zone, as
3 defined in paragraph (1) of subdivision (e), unless it is with the
4 written permission of the school district superintendent, his or her
5 designee, or equivalent school authority, shall be punished as
6 specified in subdivision (f).

7 (c) Subdivision (b) does not apply to the possession of a firearm
8 under any of the following circumstances:

9 (1) Within a place of residence or place of business or on private
10 property, if the place of residence, place of business, or private
11 property is not part of the school grounds and the possession of
12 the firearm is otherwise lawful.

13 (2) When the firearm is an unloaded pistol, revolver, or other
14 firearm capable of being concealed on the person and is in a locked
15 container or within the locked trunk of a motor vehicle.

16 This section does not prohibit or limit the otherwise lawful
17 transportation of any other firearm, other than a pistol, revolver,
18 or other firearm capable of being concealed on the person, in
19 accordance with state law.

20 (3) When the person possessing the firearm reasonably believes
21 that he or she is in grave danger because of circumstances forming
22 the basis of a current restraining order issued by a court against
23 another person or persons who has or have been found to pose a
24 threat to his or her life or safety. This subdivision may not apply
25 when the circumstances involve a mutual restraining order issued
26 pursuant to Division 10 (commencing with Section 6200) of the
27 Family Code absent a factual finding of a specific threat to the
28 person's life or safety. Upon a trial for violating subdivision (b),
29 the trier of a fact shall determine whether the defendant was acting
30 out of a reasonable belief that he or she was in grave danger.

31 (4) When the person is exempt from the prohibition against
32 carrying a concealed firearm pursuant to subdivision (b), (d), (e),
33 or (h) of Section 12027.

34 (d) Except as provided in subdivision (b), it shall be unlawful
35 for any person, with reckless disregard for the safety of another,
36 to discharge, or attempt to discharge, a firearm in a school zone,
37 as defined in paragraph (1) of subdivision (e).

38 The prohibition contained in this subdivision does not apply to
39 the discharge of a firearm to the extent that the conditions of
40 paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) “School zone” means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(2) “Firearm” has the same meaning as that term is given in Section 12001.

(3) “Locked container” has the same meaning as that term is given in subdivision (c) of Section 12026.1.

(4) “Concealed firearm” has the same meaning as that term is given in Sections 12025 and 12026.1.

(f) (1) Any person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or five years.

(2) Any person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by Chapter 1 (commencing with Section 12000) of Title 2 of Part 4.

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 12025.

(B) By imprisonment in a county jail for not more than one year or by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) Any person who violates subdivision (d) shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for three, five, or seven years.

1 (g) (1) Every person convicted under this section for a
2 misdemeanor violation of subdivision (b) who has been convicted
3 previously of a misdemeanor offense enumerated in Section
4 12001.6 shall be punished by imprisonment in a county jail for
5 not less than three months, or if probation is granted or if the
6 execution or imposition of sentence is suspended, it shall be a
7 condition thereof that he or she be imprisoned in a county jail for
8 not less than three months.

9 (2) Every person convicted under this section of a felony
10 violation of subdivision (b) or (d) who has been convicted
11 previously of a misdemeanor offense enumerated in Section
12 12001.6, if probation is granted or if the execution of sentence is
13 suspended, it shall be a condition thereof that he or she be
14 imprisoned in a county jail for not less than three months.

15 (3) Every person convicted under this section for a felony
16 violation of subdivision (b) or (d) who has been convicted
17 previously of any felony, or of any crime made punishable by
18 Chapter 1 (commencing with Section 12000) of Title 2 of Part 4,
19 if probation is granted or if the execution or imposition of sentence
20 is suspended, it shall be a condition thereof that he or she be
21 imprisoned in a county jail for not less than three months.

22 (4) The court shall apply the three-month minimum sentence
23 specified in this subdivision, except in unusual cases where the
24 interests of justice would best be served by granting probation or
25 suspending the execution or imposition of sentence without the
26 minimum imprisonment required in this subdivision or by granting
27 probation or suspending the execution or imposition of sentence
28 with conditions other than those set forth in this subdivision, in
29 which case the court shall specify on the record and shall enter on
30 the minutes the circumstances indicating that the interests of justice
31 would best be served by this disposition.

32 (h) Notwithstanding Section 12026, any person who brings or
33 possesses a loaded firearm upon the grounds of a campus of, or
34 buildings owned or operated for student housing, teaching,
35 research, or administration by, a public or private university or
36 college, that are contiguous or are clearly marked university
37 property, unless it is with the written permission of the university
38 or college president, his or her designee, or equivalent university
39 or college authority, shall be punished by imprisonment ~~in the state~~
40 ~~prison~~ *pursuant to subdivision (h) of Section 1170* for two, three,

1 or four years. Notwithstanding subdivision (k), a university or
2 college shall post a prominent notice at primary entrances on
3 noncontiguous property stating that firearms are prohibited on that
4 property pursuant to this subdivision.

5 (i) Notwithstanding Section 12026, any person who brings or
6 possesses a firearm upon the grounds of a campus of, or buildings
7 owned or operated for student housing, teaching, research, or
8 administration by, a public or private university or college, that
9 are contiguous or are clearly marked university property, unless
10 it is with the written permission of the university or college
11 president, his or her designee, or equivalent university or college
12 authority, shall be punished by imprisonment ~~in the state prison~~
13 *pursuant to subdivision (h) of Section 1170* for one, two, or three
14 years. Notwithstanding subdivision (k), a university or college
15 shall post a prominent notice at primary entrances on
16 noncontiguous property stating that firearms are prohibited on that
17 property pursuant to this subdivision.

18 (j) For purposes of this section, a firearm shall be deemed to be
19 loaded when there is an unexpended cartridge or shell, consisting
20 of a case that holds a charge of powder and a bullet or shot, in, or
21 attached in any manner to, the firearm, including, but not limited
22 to, in the firing chamber, magazine, or clip thereof attached to the
23 firearm. A muzzle-loader firearm shall be deemed to be loaded
24 when it is capped or primed and has a powder charge and ball or
25 shot in the barrel or cylinder.

26 (k) This section does not require that notice be posted regarding
27 the proscribed conduct.

28 (l) This section does not apply to a duly appointed peace officer
29 as defined in Chapter 4.5 (commencing with Section 830) of Title
30 3 of Part 2, a full-time paid peace officer of another state or the
31 federal government who is carrying out official duties while in
32 California, any person summoned by any of these officers to assist
33 in making arrests or preserving the peace while he or she is actually
34 engaged in assisting the officer, a member of the military forces
35 of this state or of the United States who is engaged in the
36 performance of his or her duties, a person holding a valid license
37 to carry the firearm pursuant to Article 3 (commencing with Section
38 12050) of Chapter 1 of Title 2 of Part 4, or an armored vehicle
39 guard, engaged in the performance of his or her duties, as defined

1 in subdivision (e) of Section 7521 of the Business and Professions
2 Code.

3 (m) This section does not apply to a security guard authorized
4 to carry a loaded firearm pursuant to Section 12031.

5 (n) This section does not apply to an existing shooting range at
6 a public or private school or university or college campus.

7 (o) This section does not apply to an honorably retired peace
8 officer authorized to carry a concealed or loaded firearm pursuant
9 to subdivision (a) or (i) of Section 12027 or paragraph (1) or (8)
10 of subdivision (b) of Section 12031.

11 *SEC. 422. Section 626.9 of the Penal Code, as amended by*
12 *Section 59 of Chapter 178 of the Statutes of 2010, is amended to*
13 *read:*

14 626.9. (a) This section shall be known, and may be cited, as
15 the Gun-Free School Zone Act of 1995.

16 (b) Any person who possesses a firearm in a place that the
17 person knows, or reasonably should know, is a school zone, as
18 defined in paragraph (1) of subdivision (e), unless it is with the
19 written permission of the school district superintendent, his or her
20 designee, or equivalent school authority, shall be punished as
21 specified in subdivision (f).

22 (c) Subdivision (b) does not apply to the possession of a firearm
23 under any of the following circumstances:

24 (1) Within a place of residence or place of business or on private
25 property, if the place of residence, place of business, or private
26 property is not part of the school grounds and the possession of
27 the firearm is otherwise lawful.

28 (2) When the firearm is an unloaded pistol, revolver, or other
29 firearm capable of being concealed on the person and is in a locked
30 container or within the locked trunk of a motor vehicle.

31 This section does not prohibit or limit the otherwise lawful
32 transportation of any other firearm, other than a pistol, revolver,
33 or other firearm capable of being concealed on the person, in
34 accordance with state law.

35 (3) When the person possessing the firearm reasonably believes
36 that he or she is in grave danger because of circumstances forming
37 the basis of a current restraining order issued by a court against
38 another person or persons who has or have been found to pose a
39 threat to his or her life or safety. This subdivision may not apply
40 when the circumstances involve a mutual restraining order issued

1 pursuant to Division 10 (commencing with Section 6200) of the
2 Family Code absent a factual finding of a specific threat to the
3 person's life or safety. Upon a trial for violating subdivision (b),
4 the trier of a fact shall determine whether the defendant was acting
5 out of a reasonable belief that he or she was in grave danger.

6 (4) When the person is exempt from the prohibition against
7 carrying a concealed firearm pursuant to Section 25615, 25625,
8 25630, or 25645.

9 (d) Except as provided in subdivision (b), it shall be unlawful
10 for any person, with reckless disregard for the safety of another,
11 to discharge, or attempt to discharge, a firearm in a school zone,
12 as defined in paragraph (1) of subdivision (e).

13 The prohibition contained in this subdivision does not apply to
14 the discharge of a firearm to the extent that the conditions of
15 paragraph (1) of subdivision (c) are satisfied.

16 (e) As used in this section, the following definitions shall apply:

17 (1) "School zone" means an area in, or on the grounds of, a
18 public or private school providing instruction in kindergarten or
19 grades 1 to 12, inclusive, or within a distance of 1,000 feet from
20 the grounds of the public or private school.

21 (2) "Firearm" has the same meaning as that term is given in
22 subdivisions (a) to (d), inclusive, of Section 16520.

23 (3) "Locked container" has the same meaning as that term is
24 given in Section 16850.

25 (4) "Concealed firearm" has the same meaning as that term is
26 given in Sections 25400 and 25610.

27 (f) (1) Any person who violates subdivision (b) by possessing
28 a firearm in, or on the grounds of, a public or private school
29 providing instruction in kindergarten or grades 1 to 12, inclusive,
30 shall be punished by imprisonment ~~in the state prison pursuant to~~
31 *subdivision (h) of Section 1170* for two, three, or five years.

32 (2) Any person who violates subdivision (b) by possessing a
33 firearm within a distance of 1,000 feet from the grounds of a public
34 or private school providing instruction in kindergarten or grades
35 1 to 12, inclusive, shall be punished as follows:

36 (A) By imprisonment ~~in the state prison pursuant to subdivision~~
37 *(h) of Section 1170* for two, three, or five years, if any of the
38 following circumstances apply:

1 (i) If the person previously has been convicted of any felony,
2 or of any crime made punishable by any provision listed in Section
3 16580.

4 (ii) If the person is within a class of persons prohibited from
5 possessing or acquiring a firearm pursuant to Chapter 2
6 (commencing with Section 29800) or Chapter 3 (commencing with
7 Section 29900) of Division 9 of Title 4 of Part 6 of this code or
8 Section 8100 or 8103 of the Welfare and Institutions Code.

9 (iii) If the firearm is any pistol, revolver, or other firearm capable
10 of being concealed upon the person and the offense is punished as
11 a felony pursuant to Section 25400.

12 (B) By imprisonment in a county jail for not more than one year
13 or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h)*
14 *of Section 1170* for two, three, or five years, in all cases other than
15 those specified in subparagraph (A).

16 (3) Any person who violates subdivision (d) shall be punished
17 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
18 *Section 1170* for three, five, or seven years.

19 (g) (1) Every person convicted under this section for a
20 misdemeanor violation of subdivision (b) who has been convicted
21 previously of a misdemeanor offense enumerated in Section 23515
22 shall be punished by imprisonment in a county jail for not less
23 than three months, or if probation is granted or if the execution or
24 imposition of sentence is suspended, it shall be a condition thereof
25 that he or she be imprisoned in a county jail for not less than three
26 months.

27 (2) Every person convicted under this section of a felony
28 violation of subdivision (b) or (d) who has been convicted
29 previously of a misdemeanor offense enumerated in Section 23515,
30 if probation is granted or if the execution of sentence is suspended,
31 it shall be a condition thereof that he or she be imprisoned in a
32 county jail for not less than three months.

33 (3) Every person convicted under this section for a felony
34 violation of subdivision (b) or (d) who has been convicted
35 previously of any felony, or of any crime made punishable by any
36 provision listed in Section 16580, if probation is granted or if the
37 execution or imposition of sentence is suspended, it shall be a
38 condition thereof that he or she be imprisoned in a county jail for
39 not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605, any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605, any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited

1 to, in the firing chamber, magazine, or clip thereof attached to the
2 firearm. A muzzle-loader firearm shall be deemed to be loaded
3 when it is capped or primed and has a powder charge and ball or
4 shot in the barrel or cylinder.

5 (k) This section does not require that notice be posted regarding
6 the proscribed conduct.

7 (l) This section does not apply to a duly appointed peace officer
8 as defined in Chapter 4.5 (commencing with Section 830) of Title
9 3 of Part 2, a full-time paid peace officer of another state or the
10 federal government who is carrying out official duties while in
11 California, any person summoned by any of these officers to assist
12 in making arrests or preserving the peace while he or she is actually
13 engaged in assisting the officer, a member of the military forces
14 of this state or of the United States who is engaged in the
15 performance of his or her duties, a person holding a valid license
16 to carry the firearm pursuant to Chapter 4 (commencing with
17 Section 26150) of Division 5 of Title 4 of Part 6, or an armored
18 vehicle guard, engaged in the performance of his or her duties, as
19 defined in subdivision (e) of Section 7521 of the Business and
20 Professions Code.

21 (m) This section does not apply to a security guard authorized
22 to carry a loaded firearm pursuant to Article 4 (commencing with
23 Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

24 (n) This section does not apply to an existing shooting range at
25 a public or private school or university or college campus.

26 (o) This section does not apply to an honorably retired peace
27 officer authorized to carry a concealed or loaded firearm pursuant
28 to any of the following:

29 (1) Article 2 (commencing with Section 25450) of Chapter 2
30 of Division 5 of Title 4 of Part 6.

31 (2) Section 25650.

32 (3) Sections 25900 to 25910, inclusive.

33 (4) Section 26020.

34 *SEC. 423. Section 626.95 of the Penal Code, as added by*
35 *Section 1 of Chapter 750 of the Statutes of 1992, is amended to*
36 *read:*

37 626.95. (a) Any person who is in violation of paragraph (2)
38 of subdivision (a), or subdivision (b), of Section 417, or Section
39 12025 or 12031, upon the grounds of or within a playground, or
40 a public or private youth center during hours in which the facility

1 is open for business, classes, or school-related programs, or at any
2 time when minors are using the facility, knowing that he or she is
3 on or within those grounds, shall be punished by imprisonment ~~in~~
4 ~~the state prison pursuant to subdivision (h) of Section 1170~~ for
5 one, two, or three years, or in a county jail not exceeding one year.

6 (b) State and local authorities are encouraged to cause signs to
7 be posted around playgrounds and youth centers giving warning
8 of prohibition of the possession of firearms upon the grounds of
9 or within playgrounds or youth centers.

10 (c) For purposes of this section, the following definitions shall
11 apply:

12 (1) "Playground" means any park or recreational area
13 specifically designed to be used by children that has play equipment
14 installed, including public grounds designed for athletic activities
15 such as baseball, football, soccer, or basketball, or any similar
16 facility located on public or private school grounds, or on city or
17 county parks.

18 (2) "Youth center" means any public or private facility that is
19 used to host recreational or social activities for minors while minors
20 are present.

21 (d) It is the Legislature's intent that only an actual conviction
22 of a felony of one of the offenses specified in this section would
23 subject the person to firearms disabilities under the federal Gun
24 Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921).

25 *SEC. 424. Section 626.95 of the Penal Code, as amended by*
26 *Section 60 of Chapter 178 of the Statutes of 2010, is amended to*
27 *read:*

28 626.95. (a) Any person who is in violation of paragraph (2)
29 of subdivision (a), or subdivision (b), of Section 417, or 25400 or
30 25850, upon the grounds of or within a playground, or a public or
31 private youth center during hours in which the facility is open for
32 business, classes, or school-related programs, or at any time when
33 minors are using the facility, knowing that he or she is on or within
34 those grounds, shall be punished by imprisonment ~~in the state~~
35 ~~prison pursuant to subdivision (h) of Section 1170~~ for one, two,
36 or three years, or in a county jail not exceeding one year.

37 (b) State and local authorities are encouraged to cause signs to
38 be posted around playgrounds and youth centers giving warning
39 of prohibition of the possession of firearms upon the grounds of
40 or within playgrounds or youth centers.

1 (c) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Playground” means any park or recreational area
4 specifically designed to be used by children that has play equipment
5 installed, including public grounds designed for athletic activities
6 such as baseball, football, soccer, or basketball, or any similar
7 facility located on public or private school grounds, or on city or
8 county parks.

9 (2) “Youth center” means any public or private facility that is
10 used to host recreational or social activities for minors while minors
11 are present.

12 (d) It is the Legislature’s intent that only an actual conviction
13 of a felony of one of the offenses specified in this section would
14 subject the person to firearms disabilities under the federal Gun
15 Control Act of 1968 (P.L. 90-618; 18 U.S.C. Sec. 921).

16 *SEC. 425. Section 626.10 of the Penal Code, as amended by*
17 *Section 1 of Chapter 258 of the Statutes of 2009, is amended to*
18 *read:*

19 626.10. (a) (1) Any person, except a duly appointed peace
20 officer as defined in Chapter 4.5 (commencing with Section 830)
21 of Title 3 of Part 2, a full-time paid peace officer of another state
22 or the federal government who is carrying out official duties while
23 in this state, a person summoned by any officer to assist in making
24 arrests or preserving the peace while the person is actually engaged
25 in assisting any officer, or a member of the military forces of this
26 state or the United States who is engaged in the performance of
27 his or her duties, who brings or possesses any dirk, dagger, ice
28 pick, knife having a blade longer than 2 ½ inches, folding knife
29 with a blade that locks into place, razor with an unguarded blade,
30 taser, or stun gun, as defined in subdivision (a) of Section 244.5,
31 any instrument that expels a metallic projectile such as a BB or a
32 pellet, through the force of air pressure, CO₂ pressure, or spring
33 action, or any spot marker gun, upon the grounds of, or within,
34 any public or private school providing instruction in kindergarten
35 or any of grades 1 to 12, inclusive, is guilty of a public offense,
36 punishable by imprisonment in a county jail not exceeding one
37 year, or by imprisonment in the state prison pursuant to subdivision
38 (h) of Section 1170.

39 (2) Any person, except a duly appointed peace officer as defined
40 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part

2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses a razor blade or a box cutter upon the grounds of, or within, any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year.

(b) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than

1 2½ inches, a razor with an unguarded blade, a razor blade, or a
2 box cutter upon the grounds of, or within, a public or private school
3 providing instruction in kindergarten or any of grades 1 to 12,
4 inclusive, or any private university, state university, or community
5 college for a lawful purpose within the scope of the person's
6 employment.

7 (e) Subdivision (b) does not apply to any person who brings or
8 possesses an ice pick or a knife having a fixed blade longer than
9 2½ inches upon the grounds of, or within, any private university,
10 state university, or community college for lawful use in or around
11 a residence or residential facility located upon those grounds or
12 for lawful use in food preparation or consumption.

13 (f) Subdivision (a) does not apply to any person who brings an
14 instrument that expels a metallic projectile such as a BB or a pellet,
15 through the force of air pressure, CO₂ pressure, or spring action,
16 or any spot marker gun, or any razor blade or box cutter upon the
17 grounds of, or within, a public or private school providing
18 instruction in kindergarten or any of grades 1 to 12, inclusive, if
19 the person has the written permission of the school principal or
20 his or her designee.

21 (g) Any certificated or classified employee or school peace
22 officer of a public or private school providing instruction in
23 kindergarten or any of grades 1 to 12, inclusive, may seize any of
24 the weapons described in subdivision (a), and any certificated or
25 classified employee or school peace officer of any private
26 university, state university, or community college may seize any
27 of the weapons described in subdivision (b), from the possession
28 of any person upon the grounds of, or within, the school if he or
29 she knows, or has reasonable cause to know, the person is
30 prohibited from bringing or possessing the weapon upon the
31 grounds of, or within, the school.

32 (h) As used in this section, "dirk" or "dagger" means a knife or
33 other instrument with or without a handguard that is capable of
34 ready use as a stabbing weapon that may inflict great bodily injury
35 or death.

36 (i) Any person who, without the written permission of the
37 college or university president or chancellor or his or her designee,
38 brings or possesses a less lethal weapon, as defined in Section
39 12601, or a stun gun, as defined in Section 12650, upon the grounds

1 of or within, a public or private college or university campus is
2 guilty of a misdemeanor.

3 *SEC. 426. Section 626.10 of the Penal Code, as amended by*
4 *Section 61 of Chapter 178 of the Statutes of 2010, is amended to*
5 *read:*

6 626.10. (a) (1) Any person, except a duly appointed peace
7 officer as defined in Chapter 4.5 (commencing with Section 830)
8 of Title 3 of Part 2, a full-time paid peace officer of another state
9 or the federal government who is carrying out official duties while
10 in this state, a person summoned by any officer to assist in making
11 arrests or preserving the peace while the person is actually engaged
12 in assisting any officer, or a member of the military forces of this
13 state or the United States who is engaged in the performance of
14 his or her duties, who brings or possesses any dirk, dagger, ice
15 pick, knife having a blade longer than 2½ inches, folding knife
16 with a blade that locks into place, razor with an unguarded blade,
17 taser, or stun gun, as defined in subdivision (a) of Section 244.5,
18 any instrument that expels a metallic projectile such as a BB or a
19 pellet, through the force of air pressure, CO₂ pressure, or spring
20 action, or any spot marker gun, upon the grounds of, or within,
21 any public or private school providing instruction in kindergarten
22 or any of grades 1 to 12, inclusive, is guilty of a public offense,
23 punishable by imprisonment in a county jail not exceeding one
24 year, or by imprisonment in the state prison pursuant to subdivision
25 (h) of Section 1170.

26 (2) Any person, except a duly appointed peace officer as defined
27 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
28 2, a full-time paid peace officer of another state or the federal
29 government who is carrying out official duties while in this state,
30 a person summoned by any officer to assist in making arrests or
31 preserving the peace while the person is actually engaged in
32 assisting any officer, or a member of the military forces of this
33 state or the United States who is engaged in the performance of
34 his or her duties, who brings or possesses a razor blade or a box
35 cutter upon the grounds of, or within, any public or private school
36 providing instruction in kindergarten or any of grades 1 to 12,
37 inclusive, is guilty of a public offense, punishable by imprisonment
38 in a county jail not exceeding one year.

39 (b) Any person, except a duly appointed peace officer as defined
40 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part

2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, or knife having a fixed blade longer than 2 ½ inches upon the grounds of, or within, any private university, the University of California, the California State University, or the California Community Colleges is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170.

(c) Subdivisions (a) and (b) do not apply to any person who brings or possesses a knife having a blade longer than 2 ½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college at the direction of a faculty member of the private university, state university, or community college, or a certificated or classified employee of the school for use in a private university, state university, community college, or school-sponsored activity or class.

(d) Subdivisions (a) and (b) do not apply to any person who brings or possesses an ice pick, a knife having a blade longer than 2 ½ inches, a razor with an unguarded blade, a razor blade, or a box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, or any private university, state university, or community college for a lawful purpose within the scope of the person's employment.

(e) Subdivision (b) does not apply to any person who brings or possesses an ice pick or a knife having a fixed blade longer than 2 ½ inches upon the grounds of, or within, any private university, state university, or community college for lawful use in or around a residence or residential facility located upon those grounds or for lawful use in food preparation or consumption.

(f) Subdivision (a) does not apply to any person who brings an instrument that expels a metallic projectile such as a BB or a pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun, or any razor blade or box cutter upon the grounds of, or within, a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has the written permission of the school principal or his or her designee.

(g) Any certificated or classified employee or school peace officer of a public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, may seize any of the weapons described in subdivision (a), and any certificated or classified employee or school peace officer of any private university, state university, or community college may seize any of the weapons described in subdivision (b), from the possession of any person upon the grounds of, or within, the school if he or she knows, or has reasonable cause to know, the person is prohibited from bringing or possessing the weapon upon the grounds of, or within, the school.

(h) As used in this section, “dirk” or “dagger” means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death.

(i) Any person who, without the written permission of the college or university president or chancellor or his or her designee, brings or possesses a less lethal weapon, as defined in Section 16780, or a stun gun, as defined in Section 17230, upon the grounds of or within, a public or private college or university campus is guilty of a misdemeanor.

SEC. 427. Section 629.84 of the Penal Code is amended to read:

629.84. Any violation of this chapter is punishable by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison pursuant to subdivision (h) of Section 1170, or by both such that fine and imprisonment in the county jail or in the state prison.

SEC. 428. Section 631 of the Penal Code is amended to read:

631. (a) Any person who, by means of any machine, instrument, or contrivance, or in any other manner, intentionally

1 taps, or makes any unauthorized connection, whether physically,
2 electrically, acoustically, inductively, or otherwise, with any
3 telegraph or telephone wire, line, cable, or instrument, including
4 the wire, line, cable, or instrument of any internal telephonic
5 communication system, or who willfully and without the consent
6 of all parties to the communication, or in any unauthorized manner,
7 reads, or attempts to read, or to learn the contents or meaning of
8 any message, report, or communication while the same is in transit
9 or passing over any wire, line, or cable, or is being sent from, or
10 received at any place within this state; or who uses, or attempts to
11 use, in any manner, or for any purpose, or to communicate in any
12 way, any information so obtained, or who aids, agrees with,
13 employs, or conspires with any person or persons to unlawfully
14 do, or permit, or cause to be done any of the acts or things
15 mentioned above in this section, is punishable by a fine not
16 exceeding two thousand five hundred dollars (\$2,500), or by
17 imprisonment in the county jail not exceeding one year, or by
18 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
19 *Section 1170*, or by both a fine and imprisonment in the county
20 jail ~~or in the state prison pursuant to subdivision (h) of Section~~
21 *1170*. If the person has previously been convicted of a violation
22 of this section or Section 632, 632.5, 632.6, 632.7, or 636, he or
23 she is punishable by a fine not exceeding ten thousand dollars
24 (\$10,000), or by imprisonment in the county jail not exceeding
25 one year, or by imprisonment ~~in the state prison pursuant to~~
26 *subdivision (h) of Section 1170*, or by both ~~a that~~ fine and
27 imprisonment ~~in the county jail or in the state prison~~.

28 (b) This section shall not apply (1) to any public utility engaged
29 in the business of providing communications services and facilities,
30 or to the officers, employees or agents thereof, where the acts
31 otherwise prohibited herein are for the purpose of construction,
32 maintenance, conduct or operation of the services and facilities of
33 the public utility, or (2) to the use of any instrument, equipment,
34 facility, or service furnished and used pursuant to the tariffs of a
35 public utility, or (3) to any telephonic communication system used
36 for communication exclusively within a state, county, city and
37 county, or city correctional facility.

38 (c) Except as proof in an action or prosecution for violation of
39 this section, no evidence obtained in violation of this section shall

1 be admissible in any judicial, administrative, legislative, or other
2 proceeding.

3 (d) This section shall become operative on January 1, 1994.

4 *SEC. 429. Section 636 of the Penal Code is amended to read:*

5 636. (a) Every person who, without permission from all parties
6 to the conversation, eavesdrops on or records, by means of an
7 electronic device, a conversation, or any portion thereof, between
8 a person who is in the physical custody of a law enforcement
9 officer or other public officer, or who is on the property of a law
10 enforcement agency or other public agency, and that person's
11 attorney, religious adviser, or licensed physician, is guilty of a
12 felony *punishable by imprisonment pursuant to subdivision (h) of*
13 *Section 1170.*

14 (b) Every person who, intentionally and without permission
15 from all parties to the conversation, nonelectronically eavesdrops
16 upon a conversation, or any portion thereof, that occurs between
17 a person who is in the physical custody of a law enforcement
18 officer or other public officer and that person's attorney, religious
19 adviser, or licensed physician, is guilty of a public offense. This
20 subdivision applies to conversations that occur in a place, and
21 under circumstances, where there exists a reasonable expectation
22 of privacy, including a custody holding area, holding area, or
23 anteroom. This subdivision does not apply to conversations that
24 are inadvertently overheard or that take place in a courtroom or
25 other room used for adjudicatory proceedings. A person who is
26 convicted of violating this subdivision shall be punished by
27 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
28 *Section 1170*, or ~~in the~~ a county jail for a term not to exceed one
29 year, or by a fine not to exceed two thousand five hundred dollars
30 (\$2,500), or by both that fine and imprisonment.

31 (c) This section shall not apply to any employee of a public
32 utility engaged in the business of providing service and facilities
33 for telephone or telegraph communications while engaged in the
34 construction, maintenance, conduct, or operation of the service or
35 facilities of that public utility who listens in to conversations for
36 the limited purpose of testing or servicing equipment.

37 *SEC. 430. Section 637 of the Penal Code is amended to read:*

38 637. Every person not a party to a telegraphic or telephonic
39 communication who willfully discloses the contents of a telegraphic
40 or telephonic message, or any part thereof, addressed to another

1 person, without the permission of ~~such~~ *that* person, unless directed
2 so to do by the lawful order of a court, is punishable by
3 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170*, or in ~~the~~ a county jail not exceeding one year, or by
5 fine not exceeding five thousand dollars (\$5,000), or by both *that*
6 fine and imprisonment.

7 *SEC. 431. Section 647.6 of the Penal Code is amended to read:*

8 647.6. (a) (1) Every person who annoys or molests any child
9 under 18 years of age shall be punished by a fine not exceeding
10 five thousand dollars (\$5,000), by imprisonment in a county jail
11 not exceeding one year, or by both the fine and imprisonment.

12 (2) Every person who, motivated by an unnatural or abnormal
13 sexual interest in children, engages in conduct with an adult whom
14 he or she believes to be a child under 18 years of age, which
15 conduct, if directed toward a child under 18 years of age, would
16 be a violation of this section, shall be punished by a fine not
17 exceeding five thousand dollars (\$5,000), by imprisonment in a
18 county jail for up to one year, or by both that fine and
19 imprisonment.

20 (b) Every person who violates this section after having entered,
21 without consent, an inhabited dwelling house, or trailer coach as
22 defined in Section 635 of the Vehicle Code, or the inhabited portion
23 of any other building, shall be punished by imprisonment ~~in the~~
24 *state prison pursuant to subdivision (h) of Section 1170*, or in a
25 county jail not exceeding one year, and by a fine not exceeding
26 five thousand dollars (\$5,000).

27 (c) (1) Every person who violates this section shall be punished
28 upon the second and each subsequent conviction by imprisonment
29 ~~in the state prison pursuant to subdivision (h) of Section 1170~~.

30 (2) Every person who violates this section after a previous felony
31 conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5,
32 or 289, any of which involved a minor under 16 years of age, or
33 a previous felony conviction under this section, a conviction under
34 Section 288, or a felony conviction under Section 311.4 involving
35 a minor under 14 years of age shall be punished by imprisonment
36 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
37 two, four, or six years.

38 (d) (1) In any case in which a person is convicted of violating
39 this section and probation is granted, the court shall require
40 counseling as a condition of probation, unless the court makes a

1 written statement in the court record, that counseling would be
2 inappropriate or ineffective.

3 (2) In any case in which a person is convicted of violating this
4 section, and as a condition of probation, the court prohibits the
5 defendant from having contact with the victim, the court order
6 prohibiting contact shall not be modified except upon the request
7 of the victim and a finding by the court that the modification is in
8 the best interest of the victim. As used in this paragraph, “contact
9 with the victim” includes all physical contact, being in the presence
10 of the victim, communication by any means, any communication
11 by a third party acting on behalf of the defendant, and any gifts.

12 (e) Nothing in this section prohibits prosecution under any other
13 provision of law.

14 *SEC. 432. Section 653f of the Penal Code is amended to read:*

15 653f. (a) Every person who, with the intent that the crime be
16 committed, solicits another to offer, accept, or join in the offer or
17 acceptance of a bribe, or to commit or join in the commission of
18 carjacking, robbery, burglary, grand theft, receiving stolen property,
19 extortion, perjury, subornation of perjury, forgery, kidnapping,
20 arson or assault with a deadly weapon or instrument or by means
21 of force likely to produce great bodily injury, or, by the use of
22 force or a threat of force, to prevent or dissuade any person who
23 is or may become a witness from attending upon, or testifying at,
24 any trial, proceeding, or inquiry authorized by law, shall be
25 punished by imprisonment in a county jail for not more than one
26 year or ~~in the state prison pursuant to subdivision (h) of Section~~
27 *1170*, or by a fine of not more than ten thousand dollars (\$10,000),
28 or the amount which could have been assessed for commission of
29 the offense itself, whichever is greater, or by both the fine and
30 imprisonment.

31 (b) Every person who, with the intent that the crime be
32 committed, solicits another to commit or join in the commission
33 of murder shall be punished by imprisonment in the state prison
34 for three, six, or nine years.

35 (c) Every person who, with the intent that the crime be
36 committed, solicits another to commit rape by force or violence,
37 sodomy by force or violence, oral copulation by force or violence,
38 or any violation of Section 264.1, 288, or 289, shall be punished
39 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
40 *Section 1170* for two, three, or four years.

(d) (1) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 11352, 11379, 11379.5, 11379.6, or 11391 of the Health and Safety Code shall be punished by imprisonment in a county jail not exceeding six months. Every person, who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

~~This~~
(2) *This* subdivision does not apply where the term of imprisonment imposed under other provisions of law would result in a longer term of imprisonment.

(e) Every person who, with the intent that the crime be committed, solicits another to commit an offense specified in Section 14014 of the Welfare and Institutions Code shall be punished by imprisonment in a county jail for not exceeding six months. Every person who, having been convicted of soliciting another to commit an offense specified in this subdivision, is subsequently convicted of the proscribed solicitation, shall be punished by imprisonment in a county jail not exceeding one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170.~~

(f) An offense charged in violation of subdivision (a), (b), or (c) shall be proven by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) or (e) shall be proven by the testimony of one witness and corroborating circumstances.

SEC. 433. *Section 653h of the Penal Code is amended to read:*

653h. (a) Every person is guilty of a public offense punishable as provided in subdivisions (b) and (c), who:

(1) Knowingly and willfully transfers or causes to be transferred any sounds that have been recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, with intent to sell or cause to be sold, or to use or cause to be used for commercial advantage or private financial gain through public performance, the article on which the sounds are so transferred, without the consent of the owner.

(2) Transports for monetary or like consideration within this state or causes to be transported within this state any such article

1 with the knowledge that the sounds thereon have been so
2 transferred without the consent of the owner.

3 (b) Any person who has been convicted of a violation of
4 subdivision (a), shall be punished by imprisonment in the county
5 jail not to exceed one year, by imprisonment ~~in the state prison~~
6 *pursuant to subdivision (h) of Section 1170* for two, three, or five
7 years, or by a fine not to exceed five hundred thousand dollars
8 (\$500,000), or by both *that fine and imprisonment*, if the offense
9 involves the transfer or transportation, or conduct causing that
10 transfer or transportation, of not less than 1,000 of the articles
11 described in subdivision (a).

12 (c) Any person who has been convicted of any other violation
13 of subdivision (a) not described in subdivision (b), shall be
14 punished by imprisonment in the county jail not to exceed one
15 year, or by a fine of not more than fifty thousand dollars (\$50,000),
16 or by both *that fine and imprisonment*. A second or subsequent
17 conviction under subdivision (a) not described in subdivision (b)
18 shall be punished by imprisonment ~~in the state prison~~ *pursuant to*
19 *subdivision (h) of Section 1170* or by a fine not to exceed two
20 hundred thousand dollars (\$200,000), or by both *that fine and*
21 *imprisonment*.

22 (d) Every person who offers for sale or resale, or sells or resells,
23 or causes the sale or resale, or rents, or possesses for these
24 purposes, any article described in subdivision (a) with knowledge
25 that the sounds thereon have been so transferred without the
26 consent of the owner is guilty of a public offense.

27 (1) A violation of subdivision (d) involving not less than 100
28 of those articles shall be punishable by imprisonment in a county
29 jail not to exceed one year or by a fine not to exceed twenty
30 thousand dollars (\$20,000), or by both *that fine and imprisonment*.
31 A second or subsequent conviction for the conduct described in
32 this paragraph shall be punishable by imprisonment in the county
33 jail not to exceed one year ~~or in the state prison~~ *pursuant to*
34 *subdivision (h) of Section 1170*, or by a fine not to exceed fifty
35 thousand dollars (\$50,000), or by both *that fine and imprisonment*.

36 (2) A person who has been convicted of any violation of this
37 subdivision not described in paragraph (1) shall be punished by
38 imprisonment in the county jail not to exceed six months or by a
39 fine not to exceed ten thousand dollars (\$10,000), or by both *that*
40 *fine and imprisonment*. A second conviction for the conduct

described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or by a fine not to exceed twenty thousand dollars (\$20,000), or by both *that fine and imprisonment*. A third or subsequent conviction for the conduct described in this paragraph shall be punishable by imprisonment in the county jail not to exceed one year or ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both *that fine and imprisonment*.

(e) As used in this section, “person” means any individual, partnership, partnership’s member or employee, corporation, limited liability company, association or corporation or association employee, officer or director; “owner” means the person who owns the original master recording embodied in the master phonograph record, master disc, master tape, master film or other article used for reproducing recorded sounds on phonograph records, discs, tapes, films or other articles on which sound is or can be recorded, and from which the transferred recorded sounds are directly or indirectly derived; and “master recording” means the original fixation of sounds upon a recording from which copies can be made.

(f) This section shall neither enlarge nor diminish the right of parties in private litigation.

(g) This section does not apply to any person engaged in radio or television broadcasting who transfers, or causes to be transferred, any such sounds (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or related uses, or for archival purposes.

(h) This section does not apply to any not-for-profit educational institution or any federal or state governmental entity, if the institution or entity has as a primary purpose the advancement of the public’s knowledge and the dissemination of information regarding America’s musical cultural heritage, provided that this purpose is clearly set forth in the institution’s or entity’s charter, bylaws, certificate of incorporation, or similar document, and the institution or entity has, prior to the transfer, made a good faith effort to identify and locate the owner or owners of the sound recordings to be transferred and, provided that the owner or owners could not be and have not been located. Nothing in this section shall be construed to relieve an institution or entity of its

1 contractual or other obligation to compensate the owners of sound
2 recordings to be transferred. In order to continue the exemption
3 permitted by this subdivision, the institution or entity shall make
4 continuing efforts to locate such owners and shall make an annual
5 public notice of the fact of the transfers in newspapers of general
6 circulation serving the jurisdictions where the owners were
7 incorporated or doing business at the time of initial affixations.
8 The institution or entity shall keep on file a record of the efforts
9 made to locate such owners for inspection by appropriate
10 governmental agencies.

11 (i) This section applies only to ~~such~~ *those* articles that were
12 initially mastered prior to February 15, 1972.

13 *SEC. 434. Section 653j of the Penal Code is amended to read:*

14 653j. (a) Every person 18 years of age or older who, in any
15 voluntary manner, solicits, induces, encourages, or intimidates any
16 minor with the intent that the minor shall commit a felony in
17 violation of paragraph (1) of subdivision (c) of Section 136.1 or
18 Section 187, 211, 215, 245, 246, 451, 459, or 520 of the Penal
19 Code, or Section 10851 of the Vehicle Code, shall be punished by
20 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
21 *Section 1170* for a period of three, five, or seven years. If the minor
22 is 16 years of age or older at the time of the offense, this section
23 shall only apply when the adult is at least five years older than the
24 minor at the time the offense is committed.

25 (b) In no case shall the court impose a sentence pursuant to
26 subdivision (a) which exceeds the maximum penalty prescribed
27 for the felony offense for which the minor was solicited, induced,
28 encouraged, or intimidated to commit.

29 (c) Whenever a sentence is imposed under subdivision (a), the
30 court shall consider the severity of the underlying crime as one of
31 the circumstances in aggravation.

32 *SEC. 435. Section 653s of the Penal Code is amended to read:*

33 653s. (a) Any person who transports or causes to be transported
34 for monetary or other consideration within this state, any article
35 containing sounds of a live performance with the knowledge that
36 the sounds thereon have been recorded or mastered without the
37 consent of the owner of the sounds of the live performance is guilty
38 of a public offense punishable as provided in subdivision (g) or
39 (h).

40 (b) As used in this section and Section 653u:

1 (1) "Live performance" means the recitation, rendering, or
2 playing of a series of musical, spoken, or other sounds in any
3 audible sequence thereof.

4 (2) "Article" means the original disc, wire, tape, film,
5 phonograph record, or other recording device used to record or
6 master the sounds of the live performance and any copy or
7 reproduction thereof which duplicates, in whole or in part, the
8 original.

9 (3) "Person" means any individual, partnership, partnership
10 member or employee, corporation, association, or corporation or
11 association employee, officer, or director, limited liability
12 company, or limited liability company manager or officer.

13 (c) In the absence of a written agreement or operation of law to
14 the contrary, the performer or performers of the sounds of a live
15 performance shall be presumed to own the right to record or master
16 those sounds.

17 (d) For purposes of this section, a person who is authorized to
18 maintain custody and control over business records reflecting the
19 consent of the owner to the recordation or master recording of a
20 live performance shall be a proper witness in any proceeding
21 regarding the issue of consent.

22 Any witness called pursuant to this section shall be subject to
23 all rules of evidence relating to the competency of a witness to
24 testify and the relevance and admissibility of the testimony offered.

25 (e) This section shall neither enlarge nor diminish the rights and
26 remedies of parties to a recording or master recording which they
27 might otherwise possess by law.

28 (f) This section shall not apply to persons engaged in radio or
29 television broadcasting or cablecasting who record or fix the sounds
30 of a live performance for, or in connection with, broadcast or cable
31 transmission and related uses in educational television or radio
32 programs, for archival purposes, or for news programs or purposes
33 if the recordation or master recording is not commercially
34 distributed independent of the broadcast or cablecast by or through
35 the broadcasting or cablecasting entity to subscribers or the general
36 public.

37 (g) Any person who has been convicted of a violation of
38 subdivision (a), shall be punished by imprisonment in the county
39 jail not to exceed one year, or by imprisonment ~~in the state~~
40 ~~prison~~ *pursuant to subdivision (h) of Section 1170* for two, three,

1 or five years, or by a fine not to exceed five hundred thousand
2 dollars (\$500,000), or by both, if the offense involves the
3 transportation or causing to be transported of not less than 1,000
4 articles described in subdivision (a).

5 (h) Any person who has been convicted of any other violation
6 of subdivision (a) not described in subdivision (g) shall be punished
7 by imprisonment in the county jail not to exceed one year, or by
8 a fine not to exceed fifty thousand dollars (\$50,000), or *by both*
9 *that fine and imprisonment*. A second or subsequent conviction
10 under subdivision (a) not described in subdivision (g) shall be
11 punished by imprisonment in the county jail not to exceed one
12 year or ~~in the state prison pursuant to subdivision (h) of Section~~
13 ~~1170~~, or by a fine not to exceed two hundred thousand dollars
14 (\$200,000), or by both *that fine and imprisonment*.

15 (i) Every person who offers for sale or resale, or sells or resells,
16 or causes the sale or resale, or rents, or possesses for these
17 purposes, any article described in subdivision (a) with knowledge
18 that the sounds thereon have been so recorded or mastered without
19 the consent of the owner of the sounds of a live performance is
20 guilty of a public offense.

21 (1) A violation of subdivision (i) involving not less than 100 of
22 those articles shall be punishable by imprisonment in a county jail
23 not to exceed one year or by a fine not to exceed twenty thousand
24 dollars (\$20,000), or by both *that fine and imprisonment*. A second
25 or subsequent conviction for the conduct described in this
26 paragraph shall be punishable by imprisonment in the county jail
27 not to exceed one year or ~~in the state prison pursuant to subdivision~~
28 ~~(h) of Section 1170~~, or by a fine not to exceed fifty thousand dollars
29 (\$50,000), or by both.

30 (2) A person who has been convicted of any violation of this
31 subdivision not described in paragraph (1) shall be punished by
32 imprisonment in the county jail not to exceed six months or by a
33 fine not to exceed ten thousand dollars (\$10,000), or by both *that*
34 *fine and imprisonment*. A second conviction for the conduct
35 described in this paragraph shall be punishable by imprisonment
36 in the county jail not to exceed one year or by a fine not to exceed
37 twenty thousand dollars (\$20,000), or by both *that fine and*
38 *imprisonment*. A third or subsequent conviction for the conduct
39 described in this paragraph shall be punishable by imprisonment
40 in the county jail not to exceed one year or ~~in the state prison~~

1 *pursuant to subdivision (h) of Section 1170*, or by a fine not to
2 exceed fifty thousand dollars (\$50,000), or by both *that fine and*
3 *imprisonment*.

4 *SEC. 436. Section 653t of the Penal Code is amended to read:*

5 653t. (a) A person commits a public offense if the person
6 knowingly and maliciously interrupts, disrupts, impedes, or
7 otherwise interferes with the transmission of a communication
8 over an amateur or a citizen's band radio frequency, the purpose
9 of which communication is to inform or inquire about an
10 emergency.

11 (b) For purposes of this section, "emergency" means a condition
12 or circumstance in which an individual is or is reasonably believed
13 by the person transmitting the communication to be in imminent
14 danger of serious bodily injury, in which property is or is
15 reasonably believed by the person transmitting the communication
16 to be in imminent danger of extensive damage or destruction, or
17 in which that injury or destruction has occurred and the person
18 transmitting is attempting to summon assistance.

19 (c) A violation of subdivision (a) is a misdemeanor punishable
20 by a fine not to exceed one thousand dollars (\$1,000), by
21 imprisonment in a county jail not to exceed six months, or by both,
22 unless, as a result of the commission of the offense, serious bodily
23 injury or property loss in excess of ten thousand dollars (\$10,000)
24 occurs, in which event the offense is a felony *punishable by*
25 *imprisonment pursuant to subdivision (h) of Section 1170*.

26 (d) Any person who knowingly and maliciously interrupts,
27 disrupts, impedes, or otherwise interferes with the transmission of
28 an emergency communication over a public safety radio frequency,
29 when the offense results in serious bodily injury or property loss
30 in excess of ten thousand dollars (\$10,000), is guilty of a felony
31 *punishable by imprisonment pursuant to subdivision (h) of Section*
32 *1170*.

33 *SEC. 437. Section 653u of the Penal Code is amended to read:*

34 653u. (a) Any person who records or masters or causes to be
35 recorded or mastered on any article with the intent to sell for
36 commercial advantage or private financial gain, the sounds of a
37 live performance with the knowledge that the sounds thereon have
38 been recorded or mastered without the consent of the owner of the
39 sounds of the live performance is guilty of a public offense
40 punishable as provided in subdivisions (d) and (e).

(b) In the absence of a written agreement or operation of law to the contrary, the performer or performers of the sounds of a live performance shall be presumed to own the right to record or master those sounds.

(c) (1) For purposes of this section, a person who is authorized to maintain custody and control over business records reflecting the consent of the owner to the recordation or master recording of a live performance shall be a proper witness in any proceeding regarding the issue of consent.

~~Any~~

(2) Any witness called pursuant to this section shall be subject to all rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

(d) Any person who has been convicted of a violation of subdivision (a) shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not to exceed five hundred thousand dollars (\$500,000), or by both *that fine and imprisonment*, if the offense involves the recording, mastering, or causing to be recorded or mastered at least 1,000 articles described in subdivision (a).

(e) Any person who has been convicted of any other violation of subdivision (a) not described in subdivision (d), shall be punished by imprisonment in the county jail not to exceed one year, or by a fine not to exceed fifty thousand dollars (\$50,000), or by both *that fine and imprisonment*. A second or subsequent conviction under subdivision (a) not described in subdivision (d) shall be punished by imprisonment in the county jail not to exceed one year or ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 or by a fine not to exceed two hundred thousand dollars (\$200,000), or by both *that fine and imprisonment*.

SEC. 438. Section 653w of the Penal Code is amended to read:

653w. (a) (1) A person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she knowingly advertises or offers for sale or resale, or sells or resells, or causes the rental, sale, or resale of, or rents, or manufactures, or possesses for these purposes, any recording or audiovisual work, the outside cover, box, jacket, or label of which does not clearly and conspicuously disclose the actual true name and address of the manufacturer thereof and the

1 name of the actual author, artist, performer, producer, programmer,
2 or group thereon. This section does not require the original
3 manufacturer or authorized licensees of software producers to
4 disclose the contributing authors or programmers.

5 ~~As~~

6 (2) ~~As~~ used in this section, “recording” means any tangible
7 medium upon which information or sounds are recorded or
8 otherwise stored, including, but not limited to, any phonograph
9 record, disc, tape, audio cassette, wire, film, memory card, flash
10 drive, hard drive, data storage device, or other medium on which
11 information or sounds are recorded or otherwise stored, but does
12 not include sounds accompanying a motion picture or other
13 audiovisual work.

14 ~~As~~

15 (3) ~~As~~ used in this section, “audiovisual works” are the physical
16 embodiment of works that consist of related images that are
17 intrinsically intended to be shown using machines or devices, such
18 as projectors, viewers, or electronic equipment, together with
19 accompanying sounds, if any, regardless of the nature of the
20 material objects, such as films, tapes, discs, memory cards, flash
21 drives, hard drives, data storage devices, or other devices, on which
22 the works are embodied.

23 (b) Any person who has been convicted of a violation of
24 subdivision (a) shall be punished as follows:

25 (1) If the offense involves the advertisement, offer for sale or
26 resale, sale, rental, manufacture, or possession for these purposes,
27 of at least 100 articles of audio recordings or 100 articles of
28 audiovisual works described in subdivision (a), the person shall
29 be punished by imprisonment in a county jail not to exceed one
30 year, or by imprisonment ~~in the state prison~~ *pursuant to subdivision*
31 *(h) of Section 1170* for two, three, or five years, or by a fine not
32 to exceed five hundred thousand dollars (\$500,000), or by both
33 *that fine and imprisonment*.

34 (2) Any other violation of subdivision (a) not described in
35 paragraph (1), shall, upon a first offense, be punished by
36 imprisonment in a county jail not to exceed one year, or by a fine
37 not to exceed fifty thousand dollars (\$50,000), or by both *that fine*
38 *and imprisonment*.

39 (3) A second or subsequent conviction under subdivision (a)
40 not described in paragraph (1), shall be punished by imprisonment

1 in a county jail not to exceed one year or ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170*, or by a fine not to
3 exceed two hundred thousand dollars (\$200,000), or by both *that*
4 *fine and imprisonment*.

5 SEC. 439. *Section 664 of the Penal Code is amended to read:*

6 664. Every person who attempts to commit any crime, but fails,
7 or is prevented or intercepted in its perpetration, shall be punished
8 where no provision is made by law for the punishment of those
9 attempts, as follows:

10 (a) If the crime attempted is punishable by imprisonment in the
11 state prison, *or by imprisonment pursuant to subdivision (h) of*
12 *Section 1170*, the person guilty of the attempt shall be punished
13 by imprisonment in the state prison *or in a county jail, respectively*,
14 for one-half the term of imprisonment prescribed upon a conviction
15 of the offense attempted. However, if the crime attempted is willful,
16 deliberate, and premeditated murder, as defined in Section 189,
17 the person guilty of that attempt shall be punished by imprisonment
18 in the state prison for life with the possibility of parole. If the crime
19 attempted is any other one in which the maximum sentence is life
20 imprisonment or death, the person guilty of the attempt shall be
21 punished by imprisonment in the state prison for five, seven, or
22 nine years. The additional term provided in this section for
23 attempted willful, deliberate, and premeditated murder shall not
24 be imposed unless the fact that the attempted murder was willful,
25 deliberate, and premeditated is charged in the accusatory pleading
26 and admitted or found to be true by the trier of fact.

27 (b) If the crime attempted is punishable by imprisonment in a
28 county jail, the person guilty of the attempt shall be punished by
29 imprisonment in a county jail for a term not exceeding one-half
30 the term of imprisonment prescribed upon a conviction of the
31 offense attempted.

32 (c) If the offense so attempted is punishable by a fine, the
33 offender convicted of that attempt shall be punished by a fine not
34 exceeding one-half the largest fine which may be imposed upon
35 a conviction of the offense attempted.

36 (d) If a crime is divided into degrees, an attempt to commit the
37 crime may be of any of those degrees, and the punishment for the
38 attempt shall be determined as provided by this section.

39 (e) Notwithstanding subdivision (a), if attempted murder is
40 committed upon a peace officer or firefighter, as those terms are

1 defined in paragraphs (7) and (9) of subdivision (a) of Section
2 190.2, a custodial officer, as that term is defined in subdivision (a)
3 of Section 831 or subdivision (a) of Section 831.5, a custody
4 assistant, as that term is defined in subdivision (a) of Section 831.7,
5 or a nonsworn uniformed employee of a sheriff's department whose
6 job entails the care or control of inmates in a detention facility, as
7 defined in subdivision (c) of Section 289.6, and the person who
8 commits the offense knows or reasonably should know that the
9 victim is a peace officer, firefighter, custodial officer, custody
10 assistant, or nonsworn uniformed employee of a sheriff's
11 department engaged in the performance of his or her duties, the
12 person guilty of the attempt shall be punished by imprisonment in
13 the state prison for life with the possibility of parole.

14 This subdivision shall apply if it is proven that a direct but
15 ineffectual act was committed by one person toward killing another
16 human being and the person committing the act harbored express
17 malice aforethought, namely, a specific intent to unlawfully kill
18 another human being. The Legislature finds and declares that this
19 paragraph is declaratory of existing law.

20 (f) Notwithstanding subdivision (a), if the elements of
21 subdivision (e) are proven in an attempted murder and it is also
22 charged and admitted or found to be true by the trier of fact that
23 the attempted murder was willful, deliberate, and premeditated,
24 the person guilty of the attempt shall be punished by imprisonment
25 in the state prison for 15 years to life. Article 2.5 (commencing
26 with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply
27 to reduce this minimum term of 15 years in state prison, and the
28 person shall not be released prior to serving 15 years' confinement.

29 *SEC. 440. Section 666 of the Penal Code is amended to read:*

30 666. ~~(a)~~ Notwithstanding Section 490, every person who,
31 having been convicted three or more times of petty theft, grand
32 theft, auto theft under Section 10851 of the Vehicle Code, burglary,
33 carjacking, robbery, or a felony violation of Section 496 and having
34 served a term therefor in any penal institution or having been
35 imprisoned therein as a condition of probation for that offense, is
36 subsequently convicted of petty theft, then the person convicted
37 of that subsequent offense is punishable by imprisonment in the
38 county jail not exceeding one year, or ~~in the state prison~~
39 *imprisonment pursuant to subdivision (h) of Section 1170.*

~~(b) Notwithstanding Section 490, any person described in paragraph (1) who, having been convicted of petty theft, grand theft, auto theft under Section 10851 of the Vehicle Code, burglary, carjacking, robbery, or a felony violation of Section 496, and having served a term of imprisonment therefor in any penal institution or having been imprisoned therein as a condition of probation for that offense, who is subsequently convicted of petty theft, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison.~~

~~(1) This subdivision shall apply to any person who is required to register pursuant to the Sex Offender Registration Act, or who has a prior violent or serious felony conviction, as specified in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.~~

~~(2) This subdivision shall not be construed to preclude prosecution or punishment pursuant to subdivisions (b) to (i), inclusive, of Section 667, or Section 1170.12.~~

SEC. 441. Section 666.5 of the Penal Code is amended to read:

666.5. (a) Every person who, having been previously convicted of a felony violation of Section 10851 of the Vehicle Code, or felony grand theft involving an automobile in violation of subdivision (d) of Section 487 or former subdivision (3) of Section 487, as that section read prior to being amended by Section 4 of Chapter 1125 of the Statutes of 1993, or felony grand theft involving a motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code in violation of former Section 487h, or a felony violation of Section 496d regardless of whether or not the person actually served a prior prison term for those offenses, is subsequently convicted of any of these offenses shall be punished by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 for two, three, or four years, or a fine of ten thousand dollars (\$10,000), or both the fine and the imprisonment.

(b) For the purposes of this section, the terms “special construction equipment” and “vessel” are limited to motorized vehicles and vessels.

(c) The existence of any fact which would bring a person under subdivision (a) shall be alleged in the information or indictment

1 and either admitted by the defendant in open court, or found to be
2 true by the jury trying the issue of guilt or by the court where guilt
3 is established by plea of guilty or nolo contendere or by trial by
4 the court sitting without a jury.

5 *SEC. 442. Section 667.5 of the Penal Code, as amended by*
6 *November 7, 2006, by Section 9 of initiative Proposition 83, is*
7 *amended to read:*

8 667.5. Enhancement of prison terms for new offenses because
9 of prior prison terms shall be imposed as follows:

10 (a) Where one of the new offenses is one of the violent felonies
11 specified in subdivision (c), in addition to and consecutive to any
12 other prison terms therefor, the court shall impose a three-year
13 term for each prior separate prison term served by the defendant
14 where the prior offense was one of the violent felonies specified
15 in subdivision (c). However, no additional term shall be imposed
16 under this subdivision for any prison term served prior to a period
17 of 10 years in which the defendant remained free of both prison
18 custody and the commission of an offense which results in a felony
19 conviction.

20 (b) Except where subdivision (a) applies, where the new offense
21 is any felony for which a prison sentence *or a sentence of*
22 *imprisonment in a county jail for more than one year* is imposed,
23 in addition and consecutive to any other prison terms therefor, the
24 court shall impose a one-year term for each prior separate prison
25 term *or county jail term of more than one year* served for any
26 felony; provided that no additional term shall be imposed under
27 this subdivision for any prison term *or county jail term of more*
28 *than one year* served prior to a period of five years in which the
29 defendant remained free of both ~~prison custody~~ and the commission
30 of an offense which results in a felony conviction, *and prison*
31 *custody or jail custody of more than one year.*

32 (c) For the purpose of this section, “violent felony” shall mean
33 any of the following:

34 (1) Murder or voluntary manslaughter.

35 (2) Mayhem.

36 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
37 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
38 262.

39 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

- 1 (5) Oral copulation as defined in subdivision (c) or (d) of Section
2 288a.
- 3 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
4 of Section 288.
- 5 (7) Any felony punishable by death or imprisonment in the state
6 prison for life.
- 7 (8) Any felony in which the defendant inflicts great bodily injury
8 on any person other than an accomplice which has been charged
9 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
10 on or after July 1, 1977, or as specified prior to July 1, 1977, in
11 Sections 213, 264, and 461, or any felony in which the defendant
12 uses a firearm which use has been charged and proved as provided
13 in subdivision (a) of Section 12022.3, or Section 12022.5 or
14 12022.55.
- 15 (9) Any robbery.
- 16 (10) Arson, in violation of subdivision (a) or (b) of Section 451.
- 17 (11) Sexual penetration as defined in subdivision (a) or (j) of
18 Section 289.
- 19 (12) Attempted murder.
- 20 (13) A violation of Section 12308, 12309, or 12310.
- 21 (14) Kidnapping.
- 22 (15) Assault with the intent to commit a specified felony, in
23 violation of Section 220.
- 24 (16) Continuous sexual abuse of a child, in violation of Section
25 288.5.
- 26 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 27 (18) Rape, spousal rape, or sexual penetration, in concert, in
28 violation of Section 264.1.
- 29 (19) Extortion, as defined in Section 518, which would constitute
30 a felony violation of Section 186.22 of the Penal Code.
- 31 (20) Threats to victims or witnesses, as defined in Section 136.1,
32 which would constitute a felony violation of Section 186.22 of the
33 Penal Code.
- 34 (21) Any burglary of the first degree, as defined in subdivision
35 (a) of Section 460, wherein it is charged and proved that another
36 person, other than an accomplice, was present in the residence
37 during the commission of the burglary.
- 38 (22) Any violation of Section 12022.53.
- 39 (23) A violation of subdivision (b) or (c) of Section 11418. The
40 Legislature finds and declares that these specified crimes merit

1 special consideration when imposing a sentence to display society's
2 condemnation for these extraordinary crimes of violence against
3 the person.

4 (d) For the purposes of this section, the defendant shall be
5 deemed to remain in prison custody for an offense until the official
6 discharge from custody or until release on parole, whichever first
7 occurs, including any time during which the defendant remains
8 subject to reimprisonment for escape from custody or is
9 reimprisoned on revocation of parole. The additional penalties
10 provided for prior prison terms shall not be imposed unless they
11 are charged and admitted or found true in the action for the new
12 offense.

13 (e) The additional penalties provided for prior prison terms shall
14 not be imposed for any felony for which the defendant did not
15 serve a prior separate term in state prison.

16 (f) A prior conviction of a felony shall include a conviction in
17 another jurisdiction for an offense which, if committed in
18 California, is punishable by imprisonment in the state prison if the
19 defendant served one year or more in prison for the offense in the
20 other jurisdiction. A prior conviction of a particular felony shall
21 include a conviction in another jurisdiction for an offense which
22 includes all of the elements of the particular felony as defined
23 under California law if the defendant served one year or more in
24 prison for the offense in the other jurisdiction.

25 (g) A prior separate prison term for the purposes of this section
26 shall mean a continuous completed period of prison incarceration
27 imposed for the particular offense alone or in combination with
28 concurrent or consecutive sentences for other crimes, including
29 any reimprisonment on revocation of parole which is not
30 accompanied by a new commitment to prison, and including any
31 reimprisonment after an escape from incarceration.

32 (h) Serving a prison term includes any confinement time in any
33 state prison or federal penal institution as punishment for
34 commission of an offense, including confinement in a hospital or
35 other institution or facility credited as service of prison time in the
36 jurisdiction of the confinement.

37 (i) For the purposes of this section, a commitment to the State
38 Department of Mental Health as a mentally disordered sex offender
39 following a conviction of a felony, which commitment exceeds
40 one year in duration, shall be deemed a prior prison term.

1 (j) For the purposes of this section, when a person subject to
2 the custody, control, and discipline of the Director of Corrections
3 is incarcerated at a facility operated by the Department of the Youth
4 Authority, that incarceration shall be deemed to be a term served
5 in state prison.

6 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
7 provision of law, where one of the new offenses is committed
8 while the defendant is temporarily removed from prison pursuant
9 to Section 2690 or while the defendant is transferred to a
10 community facility pursuant to Section 3416, 6253, or 6263, or
11 while the defendant is on furlough pursuant to Section 6254, the
12 defendant shall be subject to the full enhancements provided for
13 in this section.

14 ~~This~~

15 (2) *This* subdivision shall not apply when a full, separate, and
16 consecutive term is imposed pursuant to any other provision of
17 law.

18 SEC. 443. *Section 667.5 of the Penal Code, as amended by*
19 *Section 63 of Chapter 178 of the Statutes of 2010, is amended to*
20 *read:*

21 667.5. Enhancement of prison terms for new offenses because
22 of prior prison terms shall be imposed as follows:

23 (a) Where one of the new offenses is one of the violent felonies
24 specified in subdivision (c), in addition to and consecutive to any
25 other prison terms therefor, the court shall impose a three-year
26 term for each prior separate prison term served by the defendant
27 where the prior offense was one of the violent felonies specified
28 in subdivision (c). However, no additional term shall be imposed
29 under this subdivision for any prison term served prior to a period
30 of 10 years in which the defendant remained free of both prison
31 custody and the commission of an offense which results in a felony
32 conviction.

33 (b) Except where subdivision (a) applies, where the new offense
34 is any felony for which a prison sentence *or a sentence of*
35 *imprisonment in a county jail for more than one year* is imposed,
36 in addition and consecutive to any other prison terms therefor, the
37 court shall impose a one-year term for each prior separate prison
38 term *or county jail term of more than one year* served for any
39 felony; provided that no additional term shall be imposed under
40 this subdivision for any prison term *or county jail term of more*

1 *than one year* served prior to a period of five years in which the
2 defendant remained free of both ~~prison custody~~ and the commission
3 of an offense which results in a felony conviction, *and prison*
4 *custody or jail custody of more than one year.*

5 (c) For the purpose of this section, “violent felony” shall mean
6 any of the following:

7 (1) Murder or voluntary manslaughter.

8 (2) Mayhem.

9 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
10 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section
11 262.

12 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

13 (5) Oral copulation as defined in subdivision (c) or (d) of Section
14 288a.

15 (6) Lewd or lascivious act as defined in subdivision (a) or (b)
16 of Section 288.

17 (7) Any felony punishable by death or imprisonment in the state
18 prison for life.

19 (8) Any felony in which the defendant inflicts great bodily injury
20 on any person other than an accomplice which has been charged
21 and proved as provided for in Section 12022.7, 12022.8, or 12022.9
22 on or after July 1, 1977, or as specified prior to July 1, 1977, in
23 Sections 213, 264, and 461, or any felony in which the defendant
24 uses a firearm which use has been charged and proved as provided
25 in subdivision (a) of Section 12022.3, or Section 12022.5 or
26 12022.55.

27 (9) Any robbery.

28 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

29 (11) Sexual penetration as defined in subdivision (a) or (j) of
30 Section 289.

31 (12) Attempted murder.

32 (13) A violation of Section 18745, 18750, or 18755.

33 (14) Kidnapping.

34 (15) Assault with the intent to commit a specified felony, in
35 violation of Section 220.

36 (16) Continuous sexual abuse of a child, in violation of Section
37 288.5.

38 (17) Carjacking, as defined in subdivision (a) of Section 215.

39 (18) Rape, spousal rape, or sexual penetration, in concert, in
40 violation of Section 264.1.

1 (19) Extortion, as defined in Section 518, which would constitute
2 a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section 136.1,
4 which would constitute a felony violation of Section 186.22 of the
5 Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision
7 (a) of Section 460, wherein it is charged and proved that another
8 person, other than an accomplice, was present in the residence
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418. The
12 Legislature finds and declares that these specified crimes merit
13 special consideration when imposing a sentence to display society's
14 condemnation for these extraordinary crimes of violence against
15 the person.

16 (d) For the purposes of this section, the defendant shall be
17 deemed to remain in prison custody for an offense until the official
18 discharge from custody or until release on parole, whichever first
19 occurs, including any time during which the defendant remains
20 subject to reimprisonment for escape from custody or is
21 reimprisoned on revocation of parole. The additional penalties
22 provided for prior prison terms shall not be imposed unless they
23 are charged and admitted or found true in the action for the new
24 offense.

25 (e) The additional penalties provided for prior prison terms shall
26 not be imposed for any felony for which the defendant did not
27 serve a prior separate term in state prison.

28 (f) A prior conviction of a felony shall include a conviction in
29 another jurisdiction for an offense which, if committed in
30 California, is punishable by imprisonment in the state prison if the
31 defendant served one year or more in prison for the offense in the
32 other jurisdiction. A prior conviction of a particular felony shall
33 include a conviction in another jurisdiction for an offense which
34 includes all of the elements of the particular felony as defined
35 under California law if the defendant served one year or more in
36 prison for the offense in the other jurisdiction.

37 (g) A prior separate prison term for the purposes of this section
38 shall mean a continuous completed period of prison incarceration
39 imposed for the particular offense alone or in combination with
40 concurrent or consecutive sentences for other crimes, including

1 any reimprisonment on revocation of parole which is not
2 accompanied by a new commitment to prison, and including any
3 reimprisonment after an escape from incarceration.

4 (h) Serving a prison term includes any confinement time in any
5 state prison or federal penal institution as punishment for
6 commission of an offense, including confinement in a hospital or
7 other institution or facility credited as service of prison time in the
8 jurisdiction of the confinement.

9 (i) For the purposes of this section, a commitment to the State
10 Department of Mental Health as a mentally disordered sex offender
11 following a conviction of a felony, which commitment exceeds
12 one year in duration, shall be deemed a prior prison term.

13 (j) For the purposes of this section, when a person subject to
14 the custody, control, and discipline of the Director of Corrections
15 is incarcerated at a facility operated by the Department of the Youth
16 Authority, that incarceration shall be deemed to be a term served
17 in state prison.

18 (k) (1) Notwithstanding subdivisions (d) and (g) or any other
19 provision of law, where one of the new offenses is committed
20 while the defendant is temporarily removed from prison pursuant
21 to Section 2690 or while the defendant is transferred to a
22 community facility pursuant to Section 3416, 6253, or 6263, or
23 while the defendant is on furlough pursuant to Section 6254, the
24 defendant shall be subject to the full enhancements provided for
25 in this section.

26 ~~This~~

27 (2) *This* subdivision shall not apply when a full, separate, and
28 consecutive term is imposed pursuant to any other provision of
29 law.

30 *SEC. 444. Section 668 of the Penal Code is amended to read:*

31 668. Every person who has been convicted in any other state,
32 government, country, or jurisdiction of an offense for which, if
33 committed within this state, that person could have been punished
34 under the laws of this state by imprisonment in the state prison, is
35 punishable for any subsequent crime committed within this state
36 in the manner prescribed by law and to the same extent as if that
37 prior conviction had taken place in a court of this state. The
38 application of this section includes, but is not limited to, all statutes
39 that provide for an enhancement or a term of imprisonment based

1 on a prior conviction or a prior prison term *or a term pursuant to*
2 *subdivision (h) of Section 1170.*

3 *SEC. 445. Section 800 of the Penal Code is amended to read:*

4 800. Except as provided in Section 799, prosecution for an
5 offense punishable by imprisonment in the state prison *pursuant*
6 *to subdivision (h) of Section 1170* for eight years or more shall be
7 commenced within six years after commission of the offense.

8 *SEC. 446. Section 801 of the Penal Code is amended to read:*

9 801. Except as provided in Sections 799 and 800, prosecution
10 for an offense punishable by imprisonment in the state prison *or*
11 *pursuant to subdivision (h) of Section 1170* shall be commenced
12 within three years after commission of the offense.

13 *SEC. 447. Section 803 of the Penal Code is amended to read:*

14 803. (a) Except as provided in this section, a limitation of time
15 prescribed in this chapter is not tolled or extended for any reason.

16 (b) No time during which prosecution of the same person for
17 the same conduct is pending in a court of this state is a part of a
18 limitation of time prescribed in this chapter.

19 (c) A limitation of time prescribed in this chapter does not
20 commence to run until the discovery of an offense described in
21 this subdivision. This subdivision applies to an offense punishable
22 by imprisonment in the *state prison or imprisonment pursuant to*
23 *subdivision (h) of Section 1170*, a material element of which is
24 fraud or breach of a fiduciary obligation, the commission of the
25 crimes of theft or embezzlement upon an elder or dependent adult,
26 or the basis of which is misconduct in office by a public officer,
27 employee, or appointee, including, but not limited to, the following
28 offenses:

29 (1) Grand theft of any type, forgery, falsification of public
30 records, or acceptance of a bribe by a public official or a public
31 employee.

32 (2) A violation of Section 72, 118, 118a, 132, 134, or 186.10.

33 (3) A violation of Section 25540, of any type, or Section 25541
34 of the Corporations Code.

35 (4) A violation of Section 1090 or 27443 of the Government
36 Code.

37 (5) Felony welfare fraud or Medi-Cal fraud in violation of
38 Section 11483 or 14107 of the Welfare and Institutions Code.

1 (6) Felony insurance fraud in violation of Section 548 or 550
2 of this code or former Section 1871.1, or Section 1871.4, of the
3 Insurance Code.

4 (7) A violation of Section 580, 581, 582, 583, or 584 of the
5 Business and Professions Code.

6 (8) A violation of Section 22430 of the Business and Professions
7 Code.

8 (9) A violation of Section 10690 of the Health and Safety Code.

9 (10) A violation of Section 529a.

10 (11) A violation of subdivision (d) or (e) of Section 368.

11 (d) If the defendant is out of the state when or after the offense
12 is committed, the prosecution may be commenced as provided in
13 Section 804 within the limitations of time prescribed by this
14 chapter, and no time up to a maximum of three years during which
15 the defendant is not within the state shall be a part of those
16 limitations.

17 (e) A limitation of time prescribed in this chapter does not
18 commence to run until the offense has been discovered, or could
19 have reasonably been discovered, with regard to offenses under
20 Division 7 (commencing with Section 13000) of the Water Code,
21 under Chapter 6.5 (commencing with Section 25100) of, Chapter
22 6.7 (commencing with Section 25280) of, or Chapter 6.8
23 (commencing with Section 25300) of, Division 20 of, or Part 4
24 (commencing with Section 41500) of Division 26 of, the Health
25 and Safety Code, or under Section 386, or offenses under Chapter
26 5 (commencing with Section 2000) of Division 2 of, Chapter 9
27 (commencing with Section 4000) of Division 2 of, Section 6126
28 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
29 or Chapter 19.5 (commencing with Section 22440) of Division 8
30 of, the Business and Professions Code.

31 (f) (1) Notwithstanding any other limitation of time described
32 in this chapter, a criminal complaint may be filed within one year
33 of the date of a report to a California law enforcement agency by
34 a person of any age alleging that he or she, while under the age of
35 18 years, was the victim of a crime described in Section 261, 286,
36 288, 288a, 288.5, or 289, or Section 289.5, as enacted by Chapter
37 293 of the Statutes of 1991 relating to penetration by an unknown
38 object.

39 (2) This subdivision applies only if all of the following occur:

1 (A) The limitation period specified in Section 800, 801, or 801.1,
2 whichever is later, has expired.

3 (B) The crime involved substantial sexual conduct, as described
4 in subdivision (b) of Section 1203.066, excluding masturbation
5 that is not mutual.

6 (C) There is independent evidence that corroborates the victim's
7 allegation. If the victim was 21 years of age or older at the time
8 of the report, the independent evidence shall clearly and
9 convincingly corroborate the victim's allegation.

10 (3) No evidence may be used to corroborate the victim's
11 allegation that otherwise would be inadmissible during trial.
12 Independent evidence does not include the opinions of mental
13 health professionals.

14 (4) (A) In a criminal investigation involving any of the crimes
15 listed in paragraph (1) committed against a child, when the
16 applicable limitations period has not expired, that period shall be
17 tolled from the time a party initiates litigation challenging a grand
18 jury subpoena until the end of the litigation, including any
19 associated writ or appellate proceeding, or until the final disclosure
20 of evidence to the investigating or prosecuting agency, if that
21 disclosure is ordered pursuant to the subpoena after the litigation.

22 (B) Nothing in this subdivision affects the definition or
23 applicability of any evidentiary privilege.

24 (C) This subdivision shall not apply where a court finds that the
25 grand jury subpoena was issued or caused to be issued in bad faith.

26 (g) (1) Notwithstanding any other limitation of time described
27 in this chapter, a criminal complaint may be filed within one year
28 of the date on which the identity of the suspect is conclusively
29 established by DNA testing, if both of the following conditions
30 are met:

31 (A) The crime is one that is described in subdivision (c) of
32 Section 290.

33 (B) The offense was committed prior to January 1, 2001, and
34 biological evidence collected in connection with the offense is
35 analyzed for DNA type no later than January 1, 2004, or the offense
36 was committed on or after January 1, 2001, and biological evidence
37 collected in connection with the offense is analyzed for DNA type
38 no later than two years from the date of the offense.

39 (2) For purposes of this section, "DNA" means deoxyribonucleic
40 acid.

(h) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

SEC. 448. Section 836.6 of the Penal Code is amended to read:

836.6. (a) It is unlawful for any person who is remanded by a magistrate or judge of any court in this state to the custody of a sheriff, marshal, or other police agency, to thereafter escape or attempt to escape from that custody.

(b) It is unlawful for any person who has been lawfully arrested by any peace officer and who knows, or by the exercise of reasonable care should have known, that he or she has been so arrested, to thereafter escape or attempt to escape from that peace officer.

(c) Any person who violates subdivision (a) or (b) is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed one year. However, if the escape or attempted escape is by force or violence, and the person proximately causes a peace officer serious bodily injury, the person shall be punished by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170* for two, three, or four years, or by imprisonment in a county jail not to exceed one year.

SEC. 449. Section 1168 of the Penal Code is amended to read:

1168. (a) Every person who commits a public offense, for which any specification of three time periods of imprisonment in any *state prison or imprisonment pursuant to subdivision (h) of Section 1170* is now prescribed by law or for which only a single term of imprisonment in *state prison or imprisonment pursuant to subdivision (h) of Section 1170* is specified shall, unless such convicted person be placed on probation, a new trial granted, or the imposing of sentence suspended, be sentenced pursuant to Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2.

(b) For any person not sentenced under such provision, but who is sentenced to be imprisoned in the *state prison or imprisonment pursuant to subdivision (h) of Section 1170*, including imprisonment not exceeding one year and one day, the court imposing the sentence shall not fix the term or duration of the period of imprisonment.

SEC. 450. *Section 1170 of the Penal Code, as amended by Section 5 of Chapter 256 of the Statutes of 2010, is amended to read:*

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to give priority enrollment in programs to promote successful return to the community to an inmate with a short remaining term of commitment and a release date that would allow him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In

1 sentencing the convicted person, the court shall apply the
2 sentencing rules of the Judicial Council. The court, unless it
3 determines that there are circumstances in mitigation of the
4 punishment prescribed, shall also impose any other term that it is
5 required by law to impose as an additional term. Nothing in this
6 article shall affect any provision of law that imposes the death
7 penalty, that authorizes or restricts the granting of probation or
8 suspending the execution or imposition of sentence, or expressly
9 provides for imprisonment in the state prison for life. In any case
10 in which the amount of preimprisonment credit under Section
11 2900.5 or any other provision of law is equal to or exceeds any
12 sentence imposed pursuant to this chapter, the entire sentence shall
13 be deemed to have been served and the defendant shall not be
14 actually delivered to the custody of the secretary. The court shall
15 advise the defendant that he or she shall serve a period of parole
16 and order the defendant to report to the parole office closest to the
17 defendant's last legal residence, unless the in-custody credits equal
18 the total sentence, including both confinement time and the period
19 of parole. The sentence shall be deemed a separate prior prison
20 term under Section 667.5, and a copy of the judgment and other
21 necessary documentation shall be forwarded to the secretary.

22 (b) When a judgment of imprisonment is to be imposed and the
23 statute specifies three possible terms, the choice of the appropriate
24 term shall rest within the sound discretion of the court. At least
25 four days prior to the time set for imposition of judgment, either
26 party or the victim, or the family of the victim if the victim is
27 deceased, may submit a statement in aggravation or mitigation. In
28 determining the appropriate term, the court may consider the record
29 in the case, the probation officer's report, other reports, including
30 reports received pursuant to Section 1203.03, and statements in
31 aggravation or mitigation submitted by the prosecution, the
32 defendant, or the victim, or the family of the victim if the victim
33 is deceased, and any further evidence introduced at the sentencing
34 hearing. The court shall select the term which, in the court's
35 discretion, best serves the interests of justice. The court shall set
36 forth on the record the reasons for imposing the term selected and
37 the court may not impose an upper term by using the fact of any
38 enhancement upon which sentence is imposed under any provision
39 of law. A term of imprisonment shall not be specified if imposition
40 of sentence is suspended.

1 (c) The court shall state the reasons for its sentence choice on
2 the record at the time of sentencing. The court shall also inform
3 the defendant that as part of the sentence after expiration of the
4 term he or she may be on parole for a period as provided in Section
5 3000.

6 (d) When a defendant subject to this section or subdivision (b)
7 of Section 1168 has been sentenced to be imprisoned in the state
8 prison and has been committed to the custody of the secretary, the
9 court may, within 120 days of the date of commitment on its own
10 motion, or at any time upon the recommendation of the secretary
11 or the Board of Parole Hearings, recall the sentence and
12 commitment previously ordered and resentence the defendant in
13 the same manner as if he or she had not previously been sentenced,
14 provided the new sentence, if any, is no greater than the initial
15 sentence. The resentence under this subdivision shall apply the
16 sentencing rules of the Judicial Council so as to eliminate disparity
17 of sentences and to promote uniformity of sentencing. Credit shall
18 be given for time served.

19 (e) (1) Notwithstanding any other law and consistent with
20 paragraph (1) of subdivision (a), if the secretary or the Board of
21 Parole Hearings or both determine that a prisoner satisfies the
22 criteria set forth in paragraph (2), the secretary or the board may
23 recommend to the court that the prisoner's sentence be recalled.

24 (2) The court shall have the discretion to resentence or recall if
25 the court finds that the facts described in subparagraphs (A) and
26 (B) or subparagraphs (B) and (C) exist:

27 (A) The prisoner is terminally ill with an incurable condition
28 caused by an illness or disease that would produce death within
29 six months, as determined by a physician employed by the
30 department.

31 (B) The conditions under which the prisoner would be released
32 or receive treatment do not pose a threat to public safety.

33 (C) The prisoner is permanently medically incapacitated with
34 a medical condition that renders him or her permanently unable
35 to perform activities of basic daily living, and results in the prisoner
36 requiring 24-hour total care, including, but not limited to, coma,
37 persistent vegetative state, brain death, ventilator-dependency, loss
38 of control of muscular or neurological function, and that
39 incapacitation did not exist at the time of the original sentencing.

1 The Board of Parole Hearings shall make findings pursuant to
2 this subdivision before making a recommendation for resentence
3 or recall to the court. This subdivision does not apply to a prisoner
4 sentenced to death or a term of life without the possibility of parole.

5 (3) Within 10 days of receipt of a positive recommendation by
6 the secretary or the board, the court shall hold a hearing to consider
7 whether the prisoner's sentence should be recalled.

8 (4) Any physician employed by the department who determines
9 that a prisoner has six months or less to live shall notify the chief
10 medical officer of the prognosis. If the chief medical officer
11 concurs with the prognosis, he or she shall notify the warden.
12 Within 48 hours of receiving notification, the warden or the
13 warden's representative shall notify the prisoner of the recall and
14 resentencing procedures, and shall arrange for the prisoner to
15 designate a family member or other outside agent to be notified
16 as to the prisoner's medical condition and prognosis, and as to the
17 recall and resentencing procedures. If the inmate is deemed
18 mentally unfit, the warden or the warden's representative shall
19 contact the inmate's emergency contact and provide the information
20 described in paragraph (2).

21 (5) The warden or the warden's representative shall provide the
22 prisoner and his or her family member, agent, or emergency
23 contact, as described in paragraph (4), updated information
24 throughout the recall and resentencing process with regard to the
25 prisoner's medical condition and the status of the prisoner's recall
26 and resentencing proceedings.

27 (6) Notwithstanding any other provisions of this section, the
28 prisoner or his or her family member or designee may
29 independently request consideration for recall and resentencing
30 by contacting the chief medical officer at the prison or the
31 secretary. Upon receipt of the request, the chief medical officer
32 and the warden or the warden's representative shall follow the
33 procedures described in paragraph (4). If the secretary determines
34 that the prisoner satisfies the criteria set forth in paragraph (2), the
35 secretary or board may recommend to the court that the prisoner's
36 sentence be recalled. The secretary shall submit a recommendation
37 for release within 30 days in the case of inmates sentenced to
38 determinate terms and, in the case of inmates sentenced to
39 indeterminate terms, the secretary shall make a recommendation
40 to the Board of Parole Hearings with respect to the inmates who

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

6 (7) Any recommendation for recall submitted to the court by
7 the secretary or the Board of Parole Hearings shall include one or
8 more medical evaluations, a postrelease plan, and findings pursuant
9 to paragraph (2).

10 (8) If possible, the matter shall be heard before the same judge
11 of the court who sentenced the prisoner.

12 (9) If the court grants the recall and resentencing application,
13 the prisoner shall be released by the department within 48 hours
14 of receipt of the court's order, unless a longer time period is agreed
15 to by the inmate. At the time of release, the warden or the warden's
16 representative shall ensure that the prisoner has each of the
17 following in his or her possession: a discharge medical summary,
18 full medical records, state identification, parole medications, and
19 all property belonging to the prisoner. After discharge, any
20 additional records shall be sent to the prisoner's forwarding
21 address.

22 (10) The secretary shall issue a directive to medical and
23 correctional staff employed by the department that details the
24 guidelines and procedures for initiating a recall and resentencing
25 procedure. The directive shall clearly state that any prisoner who
26 is given a prognosis of six months or less to live is eligible for
27 recall and resentencing consideration, and that recall and
28 resentencing procedures shall be initiated upon that prognosis.

29 (f) Any sentence imposed under this article shall be subject to
30 the provisions of Sections 3000 and 3057 and any other applicable
31 provisions of law.

32 (g) A sentence to state prison for a determinate term for which
33 only one term is specified, is a sentence to state prison under this
34 section.

35 (h) (1) *Except as provided in paragraph (3), a felony punishable*
36 *pursuant to this subdivision where the term is not specified in the*
37 *underlying offense shall be punishable by a term of imprisonment*
38 *in a county jail for 16 months, or two or three years.*

1 (2) *Except as provided in paragraph (3), a felony punishable*
2 *pursuant to this subdivision shall be punishable by imprisonment*
3 *in a county jail for the term described in the underlying offense.*

4 (3) *Notwithstanding paragraphs (1) and (2), where the defendant*
5 *has a prior or current felony conviction for a serious felony*
6 *described in subdivision (c) of Section 1192.7, a violent felony*
7 *described in subdivision (c) of Section 667.5, is required to register*
8 *as a sex offender pursuant to Chapter 5.5 (commencing with*
9 *Section 290) of Title 9 of Part 1, or is convicted of a crime and as*
10 *part of the sentence an enhancement pursuant to Section 186.11*
11 *is imposed, an executed sentence for a felony punishable pursuant*
12 *to this subdivision shall be served in state prison.*

13 (4) *Nothing in this subdivision shall be construed to prevent*
14 *other dispositions authorized by law, including pretrial diversion,*
15 *deferred entry of judgment, or an order granting probation*
16 *pursuant to Section 1203.1.*

17 (5) *The sentencing changes made by the act that added this*
18 *subdivision shall be applied prospectively to any person sentenced*
19 *on or after July 1, 2011.*

20 ~~(h)~~

21 (i) *This section shall remain in effect only until January 1, 2012,*
22 *and as of that date is repealed, unless a later enacted statute, that*
23 *is enacted before that date, deletes or extends that date.*

24 *SEC. 451. Section 1170 of the Penal Code, as amended by*
25 *Section 6 of Chapter 256 of the Statutes of 2010, is amended to*
26 *read:*

27 1170. (a) (1) *The Legislature finds and declares that the*
28 *purpose of imprisonment for crime is punishment. This purpose*
29 *is best served by terms proportionate to the seriousness of the*
30 *offense with provision for uniformity in the sentences of offenders*
31 *committing the same offense under similar circumstances. The*
32 *Legislature further finds and declares that the elimination of*
33 *disparity and the provision of uniformity of sentences can best be*
34 *achieved by determinate sentences fixed by statute in proportion*
35 *to the seriousness of the offense as determined by the Legislature*
36 *to be imposed by the court with specified discretion.*

37 (2) *Notwithstanding paragraph (1), the Legislature further finds*
38 *and declares that programs should be available for inmates,*
39 *including, but not limited to, educational programs, that are*
40 *designed to prepare nonviolent felony offenders for successful*

1 reentry into the community. The Legislature encourages the
2 development of policies and programs designed to educate and
3 rehabilitate nonviolent felony offenders. In implementing this
4 section, the Department of Corrections and Rehabilitation is
5 encouraged to give priority enrollment in programs to promote
6 successful return to the community to an inmate with a short
7 remaining term of commitment and a release date that would allow
8 him or her adequate time to complete the program.

9 (3) In any case in which the punishment prescribed by statute
10 for a person convicted of a public offense is a term of imprisonment
11 in the state prison of any specification of three time periods, the
12 court shall sentence the defendant to one of the terms of
13 imprisonment specified unless the convicted person is given any
14 other disposition provided by law, including a fine, jail, probation,
15 or the suspension of imposition or execution of sentence or is
16 sentenced pursuant to subdivision (b) of Section 1168 because he
17 or she had committed his or her crime prior to July 1, 1977. In
18 sentencing the convicted person, the court shall apply the
19 sentencing rules of the Judicial Council. The court, unless it
20 determines that there are circumstances in mitigation of the
21 punishment prescribed, shall also impose any other term that it is
22 required by law to impose as an additional term. Nothing in this
23 article shall affect any provision of law that imposes the death
24 penalty, that authorizes or restricts the granting of probation or
25 suspending the execution or imposition of sentence, or expressly
26 provides for imprisonment in the state prison for life. In any case
27 in which the amount of preimprisonment credit under Section
28 2900.5 or any other provision of law is equal to or exceeds any
29 sentence imposed pursuant to this chapter, the entire sentence shall
30 be deemed to have been served and the defendant shall not be
31 actually delivered to the custody of the secretary. The court shall
32 advise the defendant that he or she shall serve a period of parole
33 and order the defendant to report to the parole office closest to the
34 defendant's last legal residence, unless the in-custody credits equal
35 the total sentence, including both confinement time and the period
36 of parole. The sentence shall be deemed a separate prior prison
37 term under Section 667.5, and a copy of the judgment and other
38 necessary documentation shall be forwarded to the secretary.

39 (b) When a judgment of imprisonment is to be imposed and the
40 statute specifies three possible terms, the court shall order

1 imposition of the middle term, unless there are circumstances in
2 aggravation or mitigation of the crime. At least four days prior to
3 the time set for imposition of judgment, either party or the victim,
4 or the family of the victim if the victim is deceased, may submit
5 a statement in aggravation or mitigation to dispute facts in the
6 record or the probation officer's report, or to present additional
7 facts. In determining whether there are circumstances that justify
8 imposition of the upper or lower term, the court may consider the
9 record in the case, the probation officer's report, other reports,
10 including reports received pursuant to Section 1203.03, and
11 statements in aggravation or mitigation submitted by the
12 prosecution, the defendant, or the victim, or the family of the victim
13 if the victim is deceased, and any further evidence introduced at
14 the sentencing hearing. The court shall set forth on the record the
15 facts and reasons for imposing the upper or lower term. The court
16 may not impose an upper term by using the fact of any
17 enhancement upon which sentence is imposed under any provision
18 of law. A term of imprisonment shall not be specified if imposition
19 of sentence is suspended.

20 (c) The court shall state the reasons for its sentence choice on
21 the record at the time of sentencing. The court shall also inform
22 the defendant that as part of the sentence after expiration of the
23 term he or she may be on parole for a period as provided in Section
24 3000.

25 (d) When a defendant subject to this section or subdivision (b)
26 of Section 1168 has been sentenced to be imprisoned in the state
27 prison and has been committed to the custody of the secretary, the
28 court may, within 120 days of the date of commitment on its own
29 motion, or at any time upon the recommendation of the secretary
30 or the Board of Parole Hearings, recall the sentence and
31 commitment previously ordered and resentence the defendant in
32 the same manner as if he or she had not previously been sentenced,
33 provided the new sentence, if any, is no greater than the initial
34 sentence. The resentence under this subdivision shall apply the
35 sentencing rules of the Judicial Council so as to eliminate disparity
36 of sentences and to promote uniformity of sentencing. Credit shall
37 be given for time served.

38 (e) (1) Notwithstanding any other law and consistent with
39 paragraph (1) of subdivision (a), if the secretary or the Board of
40 Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may
2 recommend to the court that the prisoner's sentence be recalled.

3 (2) The court shall have the discretion to resentence or recall if
4 the court finds that the facts described in subparagraphs (A) and
5 (B) or subparagraphs (B) and (C) exist:

6 (A) The prisoner is terminally ill with an incurable condition
7 caused by an illness or disease that would produce death within
8 six months, as determined by a physician employed by the
9 department.

10 (B) The conditions under which the prisoner would be released
11 or receive treatment do not pose a threat to public safety.

12 (C) The prisoner is permanently medically incapacitated with
13 a medical condition that renders him or her permanently unable
14 to perform activities of basic daily living, and results in the prisoner
15 requiring 24-hour total care, including, but not limited to, coma,
16 persistent vegetative state, brain death, ventilator-dependency, loss
17 of control of muscular or neurological function, and that
18 incapacitation did not exist at the time of the original sentencing.

19 The Board of Parole Hearings shall make findings pursuant to
20 this subdivision before making a recommendation for resentence
21 or recall to the court. This subdivision does not apply to a prisoner
22 sentenced to death or a term of life without the possibility of parole.

23 (3) Within 10 days of receipt of a positive recommendation by
24 the secretary or the board, the court shall hold a hearing to consider
25 whether the prisoner's sentence should be recalled.

26 (4) Any physician employed by the department who determines
27 that a prisoner has six months or less to live shall notify the chief
28 medical officer of the prognosis. If the chief medical officer
29 concurs with the prognosis, he or she shall notify the warden.
30 Within 48 hours of receiving notification, the warden or the
31 warden's representative shall notify the prisoner of the recall and
32 resentencing procedures, and shall arrange for the prisoner to
33 designate a family member or other outside agent to be notified
34 as to the prisoner's medical condition and prognosis, and as to the
35 recall and resentencing procedures. If the inmate is deemed
36 mentally unfit, the warden or the warden's representative shall
37 contact the inmate's emergency contact and provide the information
38 described in paragraph (2).

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

5 (6) Notwithstanding any other provisions of this section, the
6 prisoner or his or her family member or designee may
7 independently request consideration for recall and resentencing
8 by contacting the chief medical officer at the prison or the
9 secretary. Upon receipt of the request, the chief medical officer
10 and the warden or the warden's representative shall follow the
11 procedures described in paragraph (4). If the secretary determines
12 that the prisoner satisfies the criteria set forth in paragraph (2), the
13 secretary or board may recommend to the court that the prisoner's
14 sentence be recalled. The secretary shall submit a recommendation
15 for release within 30 days in the case of inmates sentenced to
16 determinate terms and, in the case of inmates sentenced to
17 indeterminate terms, the secretary shall make a recommendation
18 to the Board of Parole Hearings with respect to the inmates who
19 have applied under this section. The board shall consider this
20 information and make an independent judgment pursuant to
21 paragraph (2) and make findings related thereto before rejecting
22 the request or making a recommendation to the court. This action
23 shall be taken at the next lawfully noticed board meeting.

24 (7) Any recommendation for recall submitted to the court by
25 the secretary or the Board of Parole Hearings shall include one or
26 more medical evaluations, a postrelease plan, and findings pursuant
27 to paragraph (2).

28 (8) If possible, the matter shall be heard before the same judge
29 of the court who sentenced the prisoner.

30 (9) If the court grants the recall and resentencing application,
31 the prisoner shall be released by the department within 48 hours
32 of receipt of the court's order, unless a longer time period is agreed
33 to by the inmate. At the time of release, the warden or the warden's
34 representative shall ensure that the prisoner has each of the
35 following in his or her possession: a discharge medical summary,
36 full medical records, state identification, parole medications, and
37 all property belonging to the prisoner. After discharge, any
38 additional records shall be sent to the prisoner's forwarding
39 address.

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of six months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7, a violent felony described in subdivision (c) of Section 667.5, is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after July 1, 2011.

~~(h)~~

(i) This section shall become operative on January 1, 2012.

1 *SEC. 452. Section 1174.4 of the Penal Code, as amended by*
2 *Section 42 of Chapter 854 of the Statutes of 2001, is amended to*
3 *read:*

4 1174.4. (a) Persons eligible for participation in this alternative
5 sentencing program shall meet all of the following criteria:

6 (1) Pregnant women with an established history of substance
7 abuse, or pregnant or parenting women with an established history
8 of substance abuse who have one or more children under six years
9 old at the time of entry into the program. For women with children,
10 at least one eligible child shall reside with the mother in the facility.

11 (2) Never served a prior prison term for, nor been convicted in
12 the present proceeding of, committing or attempting to commit,
13 any of the following offenses:

14 (A) Murder or voluntary manslaughter.

15 (B) Mayhem.

16 (C) Rape.

17 (D) Kidnapping.

18 (E) Sodomy by force, violence, duress, menace, or fear of
19 immediate and unlawful bodily injury on the victim or another
20 person.

21 (F) Oral copulation by force, violence, duress, menace, or fear
22 of immediate and unlawful bodily injury on the victim or another
23 person.

24 (G) Lewd acts on a child under 14 years of age, as defined in
25 Section 288.

26 (H) Any felony punishable by death or imprisonment in the
27 state prison for life.

28 (I) Any felony in which the defendant inflicts great bodily injury
29 on any person, other than an accomplice, that has been charged
30 and proved as provided for in Section 12022.53, 12022.7, or
31 12022.9, or any felony in which the defendant uses a firearm, as
32 provided in Section 12022.5, 12022.53, or 12022.55, in which the
33 use has been charged and proved.

34 (J) Robbery.

35 (K) Any robbery perpetrated in an inhabited dwelling house or
36 trailer coach as defined in the Vehicle Code, or in the inhabited
37 portion of any other building, wherein it is charged and proved
38 that the defendant personally used a deadly or dangerous weapon,
39 as provided in subdivision (b) of Section 12022, in the commission
40 of that robbery.

1 (L) Arson in violation of subdivision (a) of Section 451.

2 (M) Sexual penetration in violation of subdivision (a) of Section
3 289 if the act is accomplished against the victim's will by force,
4 violence, duress, menace, or fear of immediate and unlawful bodily
5 injury on the victim or another person.

6 (N) Rape or sexual penetration in concert, in violation of Section
7 264.1.

8 (O) Continual sexual abuse of a child in violation of Section
9 288.5.

10 (P) Assault with intent to commit mayhem, rape, sodomy, oral
11 copulation, rape in concert with another, lascivious acts upon a
12 child, or sexual penetration.

13 (Q) Assault with a deadly weapon or with force likely to produce
14 great bodily injury in violation of subdivision (a) of Section 245.

15 (R) Any violent felony defined in Section 667.5.

16 (S) A violation of Section 12022.

17 (T) A violation of Section 12308.

18 (U) Burglary of the first degree.

19 (V) A violation of Section 11351, 11351.5, 11352, 11353,
20 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379,
21 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

22 (3) Has not been sentenced to state prison for a term exceeding
23 36 months.

24 (b) Prior to sentencing, if the court proposes to give
25 consideration to a placement, the court shall consider a written
26 evaluation by the probation department, which shall include the
27 following:

28 (1) Whether the defendant is eligible for participation pursuant
29 to this section.

30 (2) Whether participation by the defendant and her eligible
31 children is deemed to be in the best interests of the children.

32 (3) Whether the defendant is amenable to treatment for substance
33 abuse and would benefit from participation in the program.

34 (4) Whether the program is deemed to be in the best interests
35 of an eligible child of the defendant, as determined by a
36 representative of the appropriate child welfare services agency of
37 the county if the child is a dependent child of the juvenile court
38 pursuant to Section 300 of the Welfare and Institutions Code.

39 (c) The district attorney shall make a recommendation to the
40 court as to whether or not the defendant would benefit from the

1 program, which the court shall consider in making its decision. If
2 the court's decision is without the concurrence of the district
3 attorney, the court shall specify its reasons in writing and enter
4 them into the record.

5 (d) If the court determines that the defendant may benefit from
6 participation in this program, the court may impose a ~~state prison~~
7 *sentence of imprisonment pursuant to subdivision (h) of Section*
8 *1170* with the recommendation that the defendant participate in
9 the program pursuant to this chapter. The court shall notify the
10 department within 48 hours of imposition of this sentence.

11 (e) The Director of Corrections shall consider the court's
12 recommendation in making a determination on the inmate's
13 placement in the program.

14 (f) Women accepted for the program by the Director of
15 Corrections shall be delivered by the county, pursuant to Section
16 1202a, to the facility selected by the department. Before the director
17 accepts a woman for the program, the county shall provide to the
18 director the necessary information to determine her eligibility and
19 appropriate placement status. Priority for services and aftercare
20 shall be given to inmates who are incarcerated in a county, or
21 adjacent to a county, in which a program facility is located.

22 (g) Prior to being admitted to the program, each participant shall
23 voluntarily sign an agreement specifying the terms and conditions
24 of participation in the program.

25 (h) The department may refer inmates back to the sentencing
26 court if the department determines that an eligible inmate has not
27 been recommended for the program. The department shall refer
28 the inmate to the court by an evaluative report so stating the
29 department's assessment of eligibility, and requesting a
30 recommendation by the court.

31 (i) Women who successfully complete the program, including
32 the minimum of one year of transition services under intensive
33 parole supervision, shall be discharged from parole. Women who
34 do not successfully complete the program shall be returned to ~~the~~
35 ~~state prison~~ *imprisonment pursuant to subdivision (h) of Section*
36 *1170* where they shall serve their original sentences. These persons
37 shall receive full credit against their original sentences for the time
38 served in the program, pursuant to Section 2933.

1 *SEC. 453. Section 1174.4 of the Penal Code, as amended by*
2 *Section 72 of Chapter 178 of the Statutes of 2010, is amended to*
3 *read:*

4 1174.4. (a) Persons eligible for participation in this alternative
5 sentencing program shall meet all of the following criteria:

6 (1) Pregnant women with an established history of substance
7 abuse, or pregnant or parenting women with an established history
8 of substance abuse who have one or more children under six years
9 old at the time of entry into the program. For women with children,
10 at least one eligible child shall reside with the mother in the facility.

11 (2) Never served a prior prison term for, nor been convicted in
12 the present proceeding of, committing or attempting to commit,
13 any of the following offenses:

14 (A) Murder or voluntary manslaughter.

15 (B) Mayhem.

16 (C) Rape.

17 (D) Kidnapping.

18 (E) Sodomy by force, violence, duress, menace, or fear of
19 immediate and unlawful bodily injury on the victim or another
20 person.

21 (F) Oral copulation by force, violence, duress, menace, or fear
22 of immediate and unlawful bodily injury on the victim or another
23 person.

24 (G) Lewd acts on a child under 14 years of age, as defined in
25 Section 288.

26 (H) Any felony punishable by death or imprisonment in the
27 state prison for life.

28 (I) Any felony in which the defendant inflicts great bodily injury
29 on any person, other than an accomplice, that has been charged
30 and proved as provided for in Section 12022.53, 12022.7, or
31 12022.9, or any felony in which the defendant uses a firearm, as
32 provided in Section 12022.5, 12022.53, or 12022.55, in which the
33 use has been charged and proved.

34 (J) Robbery.

35 (K) Any robbery perpetrated in an inhabited dwelling house or
36 trailer coach as defined in the Vehicle Code, or in the inhabited
37 portion of any other building, wherein it is charged and proved
38 that the defendant personally used a deadly or dangerous weapon,
39 as provided in subdivision (b) of Section 12022, in the commission
40 of that robbery.

1 (L) Arson in violation of subdivision (a) of Section 451.

2 (M) Sexual penetration in violation of subdivision (a) of Section
3 289 if the act is accomplished against the victim's will by force,
4 violence, duress, menace, or fear of immediate and unlawful bodily
5 injury on the victim or another person.

6 (N) Rape or sexual penetration in concert, in violation of Section
7 264.1.

8 (O) Continual sexual abuse of a child in violation of Section
9 288.5.

10 (P) Assault with intent to commit mayhem, rape, sodomy, oral
11 copulation, rape in concert with another, lascivious acts upon a
12 child, or sexual penetration.

13 (Q) Assault with a deadly weapon or with force likely to produce
14 great bodily injury in violation of subdivision (a) of Section 245.

15 (R) Any violent felony defined in Section 667.5.

16 (S) A violation of Section 12022.

17 (T) A violation of Section 18745.

18 (U) Burglary of the first degree.

19 (V) A violation of Section 11351, 11351.5, 11352, 11353,
20 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379,
21 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

22 (3) Has not been sentenced to state prison for a term exceeding
23 36 months.

24 (b) Prior to sentencing, if the court proposes to give
25 consideration to a placement, the court shall consider a written
26 evaluation by the probation department, which shall include the
27 following:

28 (1) Whether the defendant is eligible for participation pursuant
29 to this section.

30 (2) Whether participation by the defendant and her eligible
31 children is deemed to be in the best interests of the children.

32 (3) Whether the defendant is amenable to treatment for substance
33 abuse and would benefit from participation in the program.

34 (4) Whether the program is deemed to be in the best interests
35 of an eligible child of the defendant, as determined by a
36 representative of the appropriate child welfare services agency of
37 the county if the child is a dependent child of the juvenile court
38 pursuant to Section 300 of the Welfare and Institutions Code.

39 (c) The district attorney shall make a recommendation to the
40 court as to whether or not the defendant would benefit from the

1 program, which the court shall consider in making its decision. If
2 the court's decision is without the concurrence of the district
3 attorney, the court shall specify its reasons in writing and enter
4 them into the record.

5 (d) If the court determines that the defendant may benefit from
6 participation in this program, the court may impose a ~~state prison~~
7 *sentence of imprisonment pursuant to subdivision (h) of Section*
8 *1170* with the recommendation that the defendant participate in
9 the program pursuant to this chapter. The court shall notify the
10 department within 48 hours of imposition of this sentence.

11 (e) The Director of Corrections shall consider the court's
12 recommendation in making a determination on the inmate's
13 placement in the program.

14 (f) Women accepted for the program by the Director of
15 Corrections shall be delivered by the county, pursuant to Section
16 1202a, to the facility selected by the department. Before the director
17 accepts a woman for the program, the county shall provide to the
18 director the necessary information to determine her eligibility and
19 appropriate placement status. Priority for services and aftercare
20 shall be given to inmates who are incarcerated in a county, or
21 adjacent to a county, in which a program facility is located.

22 (g) Prior to being admitted to the program, each participant shall
23 voluntarily sign an agreement specifying the terms and conditions
24 of participation in the program.

25 (h) The department may refer inmates back to the sentencing
26 court if the department determines that an eligible inmate has not
27 been recommended for the program. The department shall refer
28 the inmate to the court by an evaluative report so stating the
29 department's assessment of eligibility, and requesting a
30 recommendation by the court.

31 (i) Women who successfully complete the program, including
32 the minimum of one year of transition services under intensive
33 parole supervision, shall be discharged from parole. Women who
34 do not successfully complete the program shall be returned to ~~the~~
35 ~~state prison~~ *imprisonment pursuant to subdivision (h) of Section*
36 *1170* where they shall serve their original sentences. These persons
37 shall receive full credit against their original sentences for the time
38 served in the program, pursuant to Section 2933.

39 SEC. 454. *Section 1203.016 of the Penal Code is amended to*
40 *read:*

1 1203.016. (a) Notwithstanding any other provision of law, the
 2 board of supervisors of any county may authorize the correctional
 3 administrator, as defined in subdivision (h), to offer a program
 4 under which ~~minimum security inmates and low-risk offenders~~
 5 *inmates* committed to a county jail or other county correctional
 6 facility or granted probation, or inmates participating in a work
 7 furlough program, may voluntarily participate *or involuntarily be*
 8 *placed* in a home detention program during their sentence in lieu
 9 of confinement in the county jail or other county correctional
 10 facility or program under the auspices of the probation officer.

11 (b) The board of supervisors, *in consultation with the*
 12 *correctional administrator*, may prescribe reasonable rules and
 13 regulations under which a home detention program may operate.
 14 As a condition of participation in the home detention program, the
 15 inmate shall give his or her consent in writing to participate in the
 16 home detention program and shall in writing agree to comply *or*,
 17 *for involuntary participation, the inmate shall be informed in*
 18 *writing that he or she shall comply*, with the rules and regulations
 19 of the program, including, but not limited to, the following rules:

20 (1) The participant shall remain within the interior premises of
 21 his or her residence during the hours designated by the correctional
 22 administrator.

23 (2) The participant shall admit any person or agent designated
 24 by the correctional administrator into his or her residence at any
 25 time for purposes of verifying the participant's compliance with
 26 the conditions of his or her detention.

27 (3) The participant shall agree to the use of electronic
 28 monitoring, which may include global positioning system devices
 29 or other supervising devices for the purpose of helping to verify
 30 his or her compliance with the rules and regulations of the home
 31 detention program. The devices shall not be used to eavesdrop or
 32 record any conversation, except a conversation between the
 33 participant and the person supervising the participant which is to
 34 be used solely for the purposes of voice identification.

35 (4) The participant shall agree that the correctional administrator
 36 in charge of the county correctional facility from which the
 37 participant was released may, without further order of the court,
 38 immediately retake the person into custody to serve the balance
 39 of his or her sentence if the electronic monitoring or supervising
 40 devices are unable for any reason to properly perform their function

1 at the designated place of home detention, if the person fails to
2 remain within the place of home detention as stipulated in the
3 agreement, if the person willfully fails to pay fees to the provider
4 of electronic home detention services, as stipulated in the
5 agreement, subsequent to the written notification of the participant
6 that the payment has not been received and that return to custody
7 may result, or if the person for any other reason no longer meets
8 the established criteria under this section. A copy of the agreement
9 shall be delivered to the participant and a copy retained by the
10 correctional administrator.

11 (c) Whenever the peace officer supervising a participant has
12 reasonable cause to believe that the participant is not complying
13 with the rules or conditions of the program, or that the electronic
14 monitoring devices are unable to function properly in the
15 designated place of confinement, the peace officer may, under
16 general or specific authorization of the correctional administrator,
17 and without a warrant of arrest, retake the person into custody to
18 complete the remainder of the original sentence.

19 (d) Nothing in this section shall be construed to require the
20 correctional administrator to allow a person to participate in this
21 program if it appears from the record that the person has not
22 satisfactorily complied with reasonable rules and regulations while
23 in custody. A person shall be eligible for participation in a home
24 detention program only if the correctional administrator concludes
25 that the person meets the criteria for release established under this
26 section and that the person's participation is consistent with any
27 reasonable rules and regulations prescribed by the board of
28 supervisors or the administrative policy of the correctional
29 administrator.

30 (1) The rules and regulations and administrative policy of the
31 program shall be written and reviewed on an annual basis by the
32 county board of supervisors and the correctional administrator.
33 The rules and regulations shall be given to or made available to
34 any participant upon request.

35 (2) The correctional administrator, or his or her designee, shall
36 have the sole discretionary authority to permit program
37 participation as an alternative to physical custody. All persons
38 referred or recommended by the court to participate in the home
39 detention program pursuant to subdivision (e) who are denied
40 participation or all persons removed from program participation

1 shall be notified in writing of the specific reasons for the denial
2 or removal. The notice of denial or removal shall include the
3 participant's appeal rights, as established by program administrative
4 policy.

5 (e) The court may recommend or refer a person to the
6 correctional administrator for consideration for placement in the
7 home detention program. The recommendation or referral of the
8 court shall be given great weight in the determination of acceptance
9 or denial. At the time of sentencing or at any time that the court
10 deems it necessary, the court may restrict or deny the defendant's
11 participation in a home detention program.

12 (f) The correctional administrator may permit home detention
13 program participants to seek and retain employment in the
14 community, attend psychological counseling sessions or
15 educational or vocational training classes, or seek medical and
16 dental assistance. Willful failure of the program participant to
17 return to the place of home detention not later than the expiration
18 of any period of time during which he or she is authorized to be
19 away from the place of home detention pursuant to this section
20 and unauthorized departures from the place of home detention are
21 punishable as provided in Section 4532.

22 (g) The board of supervisors may prescribe a program
23 administrative fee to be paid by each home detention participant
24 that shall be determined according to his or her ability to pay.
25 Inability to pay all or a portion of the program fees shall not
26 preclude participation in the program, and eligibility shall not be
27 enhanced by reason of ability to pay. All program administration
28 and supervision fees shall be administered in compliance with
29 Section 1208.2.

30 (h) As used in this section, ~~the following words have the~~
31 ~~following meanings:~~ (1) "Correctional administrator" means the
32 sheriff, probation officer, or director of the county department of
33 corrections.

34 (2) ~~"Minimum security inmate" means an inmate who, by~~
35 ~~established local classification criteria, would be eligible for~~
36 ~~placement in a Type IV local detention facility, as described in~~
37 ~~Title 15 of the California Code of Regulations, or for placement~~
38 ~~into the community for work or school activities, or who is~~
39 ~~determined to be a minimum security risk under a classification~~

1 ~~plan developed pursuant to Section 1050 of Title 15 of the~~
2 ~~California Code of Regulations.~~

3 (3) ~~“Low-risk offender” means a probationer, as defined by the~~
4 ~~National Institute of Corrections model probation system.~~

5 (i) Notwithstanding any other law, the police department of a
6 city where an office is located to which persons on an electronic
7 monitoring program report may ~~require~~ *request* the county
8 correctional administrator to provide information concerning those
9 persons. This information shall be limited to the name, address,
10 date of birth, and offense committed by the home detainee. Any
11 information received by a police department pursuant to this
12 paragraph shall be used only for the purpose of monitoring the
13 impact of home detention programs on the community.

14 (j) It is the intent of the Legislature that home detention
15 programs established under this section maintain the highest public
16 confidence, credibility, and public safety. In the furtherance of
17 these standards, the following shall apply:

18 (1) The correctional administrator, with the approval of the
19 board of supervisors, may administer a home detention program
20 pursuant to written contracts with appropriate public or private
21 agencies or entities to provide specified program services. No
22 public or private agency or entity may operate a home detention
23 program in any county without a written contract with that county's
24 correctional administrator. However, this does not apply to the use
25 of electronic monitoring by the ~~California Department of~~
26 ~~Corrections or the Department of the Youth Authority as~~
27 ~~established in Section 3004 and Rehabilitation.~~ No public or private
28 agency or entity entering into a contract may itself employ any
29 person who is in the home detention program.

30 (2) Program acceptance shall not circumvent the normal booking
31 process for sentenced offenders. All home detention program
32 participants shall be supervised.

33 (3) (A) All privately operated home detention programs shall
34 be under the jurisdiction of, and subject to the terms and conditions
35 of the contract entered into with, the correctional administrator.

36 (B) Each contract shall include, but not be limited to, all of the
37 following:

38 (i) A provision whereby the private agency or entity agrees to
39 operate in compliance with any available standards promulgated
40 by state correctional agencies and bodies, including the ~~Board of~~

1 ~~Corrections~~ *Corrections Standards Authority*, and all statutory
2 provisions and mandates, state and county, as appropriate and
3 applicable to the operation of home detention programs and the
4 supervision of sentenced offenders in a home detention program.

5 (ii) A provision that clearly defines areas of respective
6 responsibility and liability of the county and the private agency or
7 entity.

8 (iii) A provision that requires the private agency or entity to
9 demonstrate evidence of financial responsibility, submitted and
10 approved by the board of supervisors, in amounts and under
11 conditions sufficient to fully indemnify the county for reasonably
12 foreseeable public liability, including legal defense costs, that may
13 arise from, or be proximately caused by, acts or omissions of the
14 contractor. The contract shall provide for annual review by the
15 correctional administrator to ensure compliance with requirements
16 set by the board of supervisors and for adjustment of the financial
17 responsibility requirements if warranted by caseload changes or
18 other factors.

19 (iv) A provision that requires the private agency or entity to
20 provide evidence of financial responsibility, such as certificates
21 of insurance or copies of insurance policies, prior to commencing
22 any operations pursuant to the contract or at any time requested
23 by the board of supervisors or correctional administrator.

24 (v) A provision that permits the correctional administrator to
25 immediately terminate the contract with a private agency or entity
26 at any time that the contractor fails to demonstrate evidence of
27 financial responsibility.

28 (C) All privately operated home detention programs shall
29 comply with all appropriate, applicable ordinances and regulations
30 specified in subdivision (a) of Section 1208.

31 (D) The board of supervisors, the correctional administrator,
32 and the designee of the correctional administrator shall comply
33 with Section 1090 of the Government Code in the consideration,
34 making, and execution of contracts pursuant to this section.

35 (E) The failure of the private agency or entity to comply with
36 statutory provisions and requirements or with the standards
37 established by the contract and with the correctional administrator
38 may be sufficient cause to terminate the contract.

39 (F) Upon the discovery that a private agency or entity with
40 whom there is a contract is not in compliance pursuant to this

1 paragraph, the correctional administrator shall give 60 days' notice
2 to the director of the private agency or entity that the contract may
3 be canceled if the specified deficiencies are not corrected.

4 (G) Shorter notice may be given or the contract may be canceled
5 without notice whenever a serious threat to public safety is present
6 because the private agency or entity has failed to comply with this
7 section.

8 (k) For purposes of this section, "evidence of financial
9 responsibility" may include, but is not limited to, certified copies
10 of any of the following:

11 (1) A current liability insurance policy.

12 (2) A current errors and omissions insurance policy.

13 (3) A surety bond.

14 SEC. 455. Section 1203.018 is added to the Penal Code, to
15 read:

16 1203.018. (a) Notwithstanding any other law, this section shall
17 only apply to inmates being held in lieu of bail and on no other
18 basis.

19 (b) Notwithstanding any other law, the board of supervisors of
20 any county may authorize the correctional administrator, as defined
21 in paragraph (1) of subdivision (k), to offer a program under which
22 inmates being held in lieu of bail in a county jail or other county
23 correctional facility may participate in an electronic monitoring
24 program if the conditions specified in subdivision (c) are met.

25 (c) (1) In order to qualify for participation in an electronic
26 monitoring program pursuant to this section, the inmate must be
27 an inmate with no holds or outstanding warrants to whom one of
28 the following circumstances applies:

29 (A) The inmate has been held in custody for at least 30 calendar
30 days from the date of arraignment pending disposition of only
31 misdemeanor charges.

32 (B) The inmate has been held in custody pending disposition
33 of charges for at least 60 calendar days from the date of
34 arraignment.

35 (2) All participants shall be subject to discretionary review for
36 eligibility and compliance by the correctional administrator
37 consistent with this section.

38 (d) The board of supervisors, after consulting with the sheriff
39 and district attorney, may prescribe reasonable rules and regulations
40 under which an electronic monitoring program pursuant to this

1 section may operate. As a condition of participation in the
2 electronic monitoring program, the participant shall give his or
3 her consent in writing to participate and shall agree in writing to
4 comply with the rules and regulations of the program, including,
5 but not limited to, all of the following:

6 (1) The participant shall remain within the interior premises of
7 his or her residence during the hours designated by the correctional
8 administrator.

9 (2) The participant shall admit any person or agent designated
10 by the correctional administrator into his or her residence at any
11 time for purposes of verifying the participant's compliance with
12 the conditions of his or her detention.

13 (3) The electronic monitoring may include global positioning
14 system devices or other supervising devices for the purpose of
15 helping to verify the participant's compliance with the rules and
16 regulations of the electronic monitoring program. The electronic
17 devices shall not be used to eavesdrop or record any conversation,
18 except a conversation between the participant and the person
19 supervising the participant to be used solely for the purposes of
20 voice identification.

21 (4) The correctional administrator in charge of the county
22 correctional facility from which the participant was released may,
23 without further order of the court, immediately retake the person
24 into custody if the electronic monitoring or supervising devices
25 are unable for any reason to properly perform their function at the
26 designated place of home detention, if the person fails to remain
27 within the place of home detention as stipulated in the agreement,
28 if the person willfully fails to pay fees to the provider of electronic
29 home detention services, as stipulated in the agreement, subsequent
30 to the written notification of the participant that the payment has
31 not been received and that return to custody may result, or if the
32 person for any other reason no longer meets the established criteria
33 under this section.

34 (5) A copy of the signed consent to participate and a copy of
35 the agreement to comply with the rules and regulations shall be
36 provided to the participant and a copy shall be retained by the
37 correctional administrator.

38 (e) The rules and regulations and administrative policy of the
39 program shall be reviewed on an annual basis by the county board

1 of supervisors and the correctional administrator. The rules and
2 regulations shall be given to every participant.

3 (f) Whenever the peace officer supervising a participant has
4 reasonable cause to believe that the participant is not complying
5 with the rules or conditions of the program, or that the electronic
6 monitoring devices are unable to function properly in the
7 designated place of confinement, the peace officer may, under
8 general or specific authorization of the correctional administrator,
9 and without a warrant of arrest, retake the person into custody.

10 (g) (1) Nothing in this section shall be construed to require the
11 correctional administrator to allow a person to participate in this
12 program if it appears from the record that the person has not
13 satisfactorily complied with reasonable rules and regulations while
14 in custody. A person shall be eligible for participation in an
15 electronic monitoring program only if the correctional administrator
16 concludes that the person meets the criteria for release established
17 under this section and that the person's participation is consistent
18 with any reasonable rules and regulations prescribed by the board
19 of supervisors or the administrative policy of the correctional
20 administrator.

21 (2) The correctional administrator, or his or her designee, shall
22 have discretionary authority consistent with this section to permit
23 program participation as an alternative to physical custody. All
24 persons approved by the correctional administrator to participate
25 in the electronic monitoring program pursuant to subdivision (c)
26 who are denied participation and all persons removed from program
27 participation shall be notified in writing of the specific reasons for
28 the denial or removal. The notice of denial or removal shall include
29 the participant's appeal rights, as established by program
30 administrative policy.

31 (h) The correctional administrator may permit electronic
32 monitoring program participants to seek and retain employment
33 in the community, attend psychological counseling sessions or
34 educational or vocational training classes, or seek medical and
35 dental assistance.

36 (i) Willful failure of the program participant to return to the
37 place of home detention later than the expiration of any period of
38 time during which he or she is authorized to be away from the
39 place of home detention pursuant to this section and unauthorized

1 departures from the place of home detention is guilty of
2 misdemeanor.

3 (j) The board of supervisors may prescribe a program
4 administrative fee to be paid by each electronic monitoring
5 participant.

6 (k) For purposes of this section, the following terms have the
7 following meanings:

8 (1) "Correctional administrator" means the sheriff, probation
9 officer, or director of the county department of corrections.

10 (2) "Electronic monitoring program" includes, but is not limited
11 to, home detention programs, work furlough programs, and work
12 release programs.

13 (l) Notwithstanding any other law, upon request of a local law
14 enforcement agency with jurisdiction over the location where a
15 participant in an electronic monitoring program is placed, the
16 correctional administrator shall provide the following information
17 regarding participants in the electronic monitoring program:

18 (1) The participant's name, address, and date of birth.

19 (2) The offense or offenses alleged to have been committed by
20 the participant.

21 (3) The period of time the participant will be placed on home
22 detention.

23 (4) Whether the participant successfully completed the
24 prescribed period of home detention or was returned to a county
25 correctional facility, and if the person was returned to a county
26 correctional facility, the reason for the return.

27 (5) The gender and ethnicity of the participant.

28 (m) Any information received by a law enforcement agency
29 pursuant to subdivision (l) shall be used only for the purpose of
30 monitoring the impact of home electronic monitoring programs in
31 the community.

32 (n) It is the intent of the Legislature that electronic monitoring
33 programs established under this section maintain the highest public
34 confidence, credibility, and public safety. In the furtherance of
35 these standards, the following shall apply:

36 (1) The correctional administrator, with the approval of the
37 board of supervisors, may administer an electronic monitoring
38 program as provided in this section pursuant to written contracts
39 with appropriate public or private agencies or entities to provide
40 specified program services. No public or private agency or entity

1 may operate a home detention program pursuant to this section in
2 any county without a written contract with that county's
3 correctional administrator. No public or private agency or entity
4 entering into a contract pursuant to this subdivision may itself
5 employ any person who is in the electronic monitoring program.

6 (2) Program participants shall undergo the normal booking
7 process for arrestees entering the jail. All electronic monitoring
8 program participants shall be supervised.

9 (3) (A) All privately operated electronic monitoring programs
10 shall be under the jurisdiction of, and subject to the terms and
11 conditions of the contract entered into with, the correctional
12 administrator.

13 (B) Each contract specified in subparagraph (A) shall include,
14 but not be limited to, all of the following:

15 (i) A provision whereby the private agency or entity agrees to
16 operate in compliance with any available standards and all state
17 and county laws applicable to the operation of electronic
18 monitoring programs and the supervision of offenders in an
19 electronic monitoring program.

20 (ii) A provision that clearly defines areas of respective
21 responsibility and liability of the county and the private agency or
22 entity.

23 (iii) A provision that requires the private agency or entity to
24 demonstrate evidence of financial responsibility, submitted to and
25 approved by the board of supervisors, in amounts and under
26 conditions sufficient to fully indemnify the county for reasonably
27 foreseeable public liability, including legal defense costs that may
28 arise from, or be proximately caused by, acts or omissions of the
29 contractor.

30 (iv) A provision that requires the private agency or entity to
31 provide evidence of financial responsibility, such as certificates
32 of insurance or copies of insurance policies, prior to commencing
33 any operations pursuant to the contract or at any time requested
34 by the board of supervisors or correctional administrator.

35 (v) A provision that requires an annual review by the
36 correctional administrator to ensure compliance with requirements
37 set by the board of supervisors and for adjustment of the financial
38 responsibility requirements if warranted by caseload changes or
39 other factors.

1 (vi) A provision that permits the correctional administrator to
2 immediately terminate the contract with a private agency or entity
3 at any time that the contractor fails to demonstrate evidence of
4 financial responsibility.

5 (C) All privately operated electronic monitoring programs shall
6 comply with all applicable ordinances and regulations specified
7 in subdivision (a) of Section 1208.

8 (D) The board of supervisors, the correctional administrator,
9 and the designee of the correctional administrator shall comply
10 with Section 1090 of the Government Code in the consideration,
11 making, and execution of contracts pursuant to this section.

12 (E) The failure of the private agency or entity to comply with
13 state or county laws or with the standards established by the
14 contract with the correctional administrator shall constitute cause
15 to terminate the contract.

16 (F) Upon the discovery that a private agency or entity with
17 which there is a contract is not in compliance with this paragraph,
18 the correctional administrator shall give 60 days' notice to the
19 director of the private agency or entity that the contract may be
20 canceled if the specified deficiencies are not corrected.

21 (G) Shorter notice may be given or the contract may be canceled
22 without notice whenever a serious threat to public safety is present
23 because the private agency or entity has failed to comply with this
24 section.

25 (H) For purposes of this section, "evidence of financial
26 responsibility" may include, but is not limited to, certified copies
27 of any of the following:

28 (i) A current liability insurance policy.

29 (ii) A current errors and omissions insurance policy.

30 (iii) A surety bond.

31 *SEC. 456. Section 1208.2 of the Penal Code is amended to*
32 *read:*

33 1208.2. (a) (1) This section shall apply to individuals
34 authorized to participate in a work furlough program pursuant to
35 Section 1208, or to individuals authorized to participate in an
36 electronic home detention program pursuant to Section 1203.016,
37 *or 1203.018*, or to individuals authorized to participate in a county
38 parole program pursuant to Article 3.5 (commencing with Section
39 3074) of Chapter 8 of Title 1 of Part 3.

(2) As used in this section, as appropriate, “administrator” means the sheriff, probation officer, director of the county department of corrections, or county parole administrator.

(b) (1) A board of supervisors which implements programs identified in paragraph (1) of subdivision (a), may prescribe a program administrative fee and an application fee, that together shall not exceed the pro rata cost of the program to which the person is accepted, including equipment, supervision, and other operating costs, except as provided in paragraph (2).

(2) With regard to a privately operated electronic home detention program pursuant to Section 1203.016 *or* 1203.018, the limitation, described in paragraph (1), in prescribing a program administrative fee and application fee shall not apply.

(c) The correctional administrator, or his or her designee, shall not have access to a person’s financial data prior to granting or denying a person’s participation in, or assigning a person to, any of the programs governed by this section.

(d) The correctional administrator, or his or her designee, shall not consider a person’s ability or inability to pay all or a portion of the program fee for the purposes of granting or denying a person’s participation in, or assigning a person to, any of the programs governed by this section.

(e) For purposes of this section, “ability to pay” means the overall capability of the person to reimburse the costs, or a portion of the costs, of providing supervision and shall include, but shall not be limited to, consideration of all of the following factors:

(1) Present financial position.

(2) Reasonably discernible future financial position. In no event shall the administrator, or his or her designee, consider a period of more than six months from the date of acceptance into the program for purposes of determining reasonably discernible future financial position.

(3) Likelihood that the person shall be able to obtain employment within the six-month period from the date of acceptance into the program.

(4) Any other factor that may bear upon the person’s financial capability to reimburse the county for the fees fixed pursuant to subdivision (b).

(f) The administrator, or his or her designee, may charge a person the fee set by the board of supervisors or any portion of the

1 fee and may determine the method and frequency of payment. Any
2 fee the administrator, or his or her designee, charges pursuant to
3 this section shall not in any case be in excess of the fee set by the
4 board of supervisors and shall be based on the person's ability to
5 pay. The administrator, or his or her designee, shall have the option
6 to waive the fees for program supervision when deemed necessary,
7 justified, or in the interests of justice. The fees charged for program
8 supervision may be modified or waived at any time based on the
9 changing financial position of the person. All fees paid by persons
10 for program supervision shall be deposited into the general fund
11 of the county.

12 (g) No person shall be denied consideration for, or be removed
13 from, participation in any of the programs to which this section
14 applies because of an inability to pay all or a portion of the program
15 supervision fees. At any time during a person's sentence, the person
16 may request that the administrator, or his or her designee, modify
17 or suspend the payment of fees on the grounds of a change in
18 circumstances with regard to the person's ability to pay.

19 (h) If the person and the administrator, or his or her designee,
20 are unable to come to an agreement regarding the person's ability
21 to pay, or the amount which is to be paid, or the method and
22 frequency with which payment is to be made, the administrator,
23 or his or her designee, shall advise the appropriate court of the fact
24 that the person and administrator, or his or her designee, have not
25 been able to reach agreement and the court shall then resolve the
26 disagreement by determining the person's ability to pay, the amount
27 which is to be paid, and the method and frequency with which
28 payment is to be made.

29 (i) At the time a person is approved for any of the programs to
30 which this section applies, the administrator, or his or her designee,
31 shall furnish the person a written statement of the person's rights
32 in regard to the program for which the person has been approved,
33 including, but not limited to, both of the following:

34 (1) The fact that the person cannot be denied consideration for
35 or removed from participation in the program because of an
36 inability to pay.

37 (2) The fact that if the person is unable to reach agreement with
38 the administrator, or his or her designee, regarding the person's
39 ability to pay, the amount which is to be paid, or the manner and

1 frequency with which payment is to be made, that the matter shall
2 be referred to the court to resolve the differences.

3 (j) In all circumstances where a county board of supervisors has
4 approved a program administrator, as described in ~~Sections~~
5 ~~1203.016 and 1208~~ *Section 1203.016, 1203.018, or 1208*, to enter
6 into a contract with a private agency or entity to provide specified
7 program services, the program administrator shall ensure that the
8 provisions of this section are contained within any contractual
9 agreement for this purpose. All privately operated home detention
10 programs shall comply with all appropriate, applicable ordinances
11 and regulations specified in subdivision (a) of Section 1208.

12 *SEC. 457. Section 1213 of the Penal Code is amended to read:*

13 1213. (a) When a probationary order or a judgment, other than
14 of death, has been pronounced, a copy of the entry of that portion
15 of the probationary order ordering the defendant confined in a city
16 or county jail as a condition of probation, or a copy of the entry
17 of the judgment, or, if the judgment is for imprisonment in the
18 *state prison or imprisonment pursuant to subdivision (h) of Section*
19 *1170*, either a copy of the minute order or an abstract of the
20 judgment as provided in Section 1213.5, certified by the clerk of
21 the court, and a Criminal Investigation and Identification (CII)
22 number shall be forthwith furnished to the officer whose duty it
23 is to execute the probationary order or judgment, and no other
24 warrant or authority is necessary to justify or require its execution.

25 (b) If a copy of the minute order is used as the commitment
26 document, the first page or pages shall be identical in form and
27 content to that prescribed by the Judicial Council for an abstract
28 of judgment, and other matters as appropriate may be added
29 thereafter.

30 *SEC. 458. Section 1230.1 is added to the Penal Code, to read:*

31 1230.1. Each county local Community Corrections Partnership
32 established pursuant to subdivision (b) of Section 1230 shall
33 recommend a local plan to the county board of supervisors for the
34 implementation of the 2011 public safety realignment. There is
35 hereby established an executive committee of each county's
36 Community Corrections Partnership consisting of the chief
37 probation officer of the county, a chief of police, the sheriff, a
38 county supervisor or the chief administrative officer for the county,
39 and the head of the county department of social services for
40 purposes related to the development and presentation of the plan.

Consistent with local needs and resources, the plan may include recommendations to maximize the effective investment of criminal justice resources in evidence-based correctional sanctions and programs, including, but not limited to, day reporting centers, drug courts, residential multiservice centers, mental health treatment programs, electronic and GPS monitoring programs, victim restitution programs, counseling programs, community service programs, educational programs, and work training programs.

SEC. 459. Section 1320 of the Penal Code is amended to read:

1320. (a) Every person who is charged with or convicted of the commission of a misdemeanor who is released from custody on his or her own recognizance and who in order to evade the process of the court willfully fails to appear as required, is guilty of a misdemeanor. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court.

(b) Every person who is charged with or convicted of the commission of a felony who is released from custody on his or her own recognizance and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony, and upon conviction shall be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170, or in the county jail for not more than one year, or by both that fine and imprisonment. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court.

SEC. 460. Section 1320.5 of the Penal Code is amended to read:

1320.5. Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony. Upon a conviction under this section, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170, or in the county jail for not more than one year, or by both the fine and imprisonment. Willful failure to appear within 14 days of the date assigned for appearance may be found to have been for the purpose of evading the process of the court.

1 SEC. 461. Section 2057 is added to the Penal Code, to read:

2 2057. Counties are authorized to contract with the Department
3 of Corrections and Rehabilitation for the commitment to the
4 department, of persons who have suffered a felony conviction.

5 SEC. 462. *Section 2600 of the Penal Code is amended to read:*

6 2600. A person sentenced to imprisonment in a state prison or
7 to imprisonment pursuant to subdivision (h) of Section 1170 may
8 during that period of confinement be deprived of such rights, and
9 only such rights, as is reasonably related to legitimate penological
10 interests.

11 Nothing in this section shall be construed to permit the
12 involuntary administration of psychotropic medication unless the
13 process specified in the permanent injunction, dated October 31,
14 1986, in the matter of Keyhea v. Rushen, 178 Cal. App. 3d 526,
15 has been followed. The judicial hearing for the authorization for
16 the involuntary administration of psychotropic medication provided
17 for in Part III of the injunction shall be conducted by an
18 administrative law judge. The hearing may, at the direction of the
19 director, be conducted at the facility where the inmate is located.

20 Nothing in this section shall be construed to overturn the decision
21 in Thor v. Superior Court, 5 Cal. 4th 725.

22 SEC. 463. *Section 2650 of the Penal Code is amended to read:*

23 2650. The person of a prisoner sentenced to imprisonment in
24 the state prison or to imprisonment pursuant to subdivision (h) of
25 Section 1170 is under the protection of the law, and any injury to
26 his person, not authorized by law, is punishable in the same manner
27 as if he were not convicted or sentenced.

28 SEC. 464. *Section 2772 of the Penal Code is amended to read:*

29 2772. Any person who, without authority, interferes with or
30 in any way interrupts the work of any prisoners employed pursuant
31 to this article, and any person not authorized by law, who gives or
32 attempts to give to any prisoner so employed any controlled
33 substances or any intoxicating liquors of any kind whatever, or
34 firearms, weapons or explosives of any kind, is guilty of a felony
35 and upon conviction thereof shall be punished by imprisonment
36 in the state prison pursuant to subdivision (h) of Section 1170 and
37 shall be disqualified from holding any state office or position in
38 the employ of this state. Any person who interferes with the
39 discipline or good conduct of any prisoner employed pursuant to
40 this article, while such that prisoner is in the confines or limits of

1 the state prison road camp is guilty of a misdemeanor and upon
2 conviction thereof shall be punished by imprisonment in the county
3 jail for a term not more than six months, or by a fine of not more
4 than two hundred dollars (\$200), or by both ~~such that~~ fine and
5 imprisonment. Any peace officer or any officer or guard of any
6 state prison or any superintendent of ~~such that~~ road work, having
7 in charge the prisoners employed upon such highways or state
8 roads, may arrest without a warrant any person violating any
9 provisions of this article.

10 *SEC. 465. Section 2790 of the Penal Code is amended to read:*

11 2790. Any person, who, without authority, interferes with or
12 in any way interrupts the work of any convict used pursuant to this
13 article and any person not authorized by law, who gives or attempts
14 to give to any state prison convict so employed any controlled
15 substances, or any intoxicating liquors of any kind whatever, or
16 firearms, weapons or explosives of any kind is guilty of a felony
17 and upon conviction thereof shall be punished by imprisonment
18 ~~in the state prison pursuant to subdivision (h) of Section 1170 and~~
19 shall be disqualified from holding any state office or position in
20 the employ of this state. Any person who interferes with the
21 discipline or good conduct of any convict used pursuant to this
22 article, while ~~such that~~ convict is in such camps is guilty of a
23 misdemeanor and upon conviction thereof shall be punished by
24 imprisonment in the county jail for a term not more than six
25 months, or by a fine of not more than four hundred dollars (\$400),
26 or by both ~~such that~~ fine and imprisonment. Any peace officer or
27 any officer or guard of any state prison or any superintendent of
28 ~~such that~~ work, having in charge the convicts used in ~~such those~~
29 camps, may arrest without a warrant any person violating any
30 provisions of this article.

31 *SEC. 466. Section 2900.5 of the Penal Code is amended to*
32 *read:*

33 2900.5. (a) In all felony and misdemeanor convictions, either
34 by plea or by verdict, when the defendant has been in custody,
35 including, but not limited to, any time spent in a jail, camp, work
36 furlough facility, halfway house, rehabilitation facility, hospital,
37 prison, juvenile detention facility, or similar residential institution,
38 all days of custody of the defendant, including days served as a
39 condition of probation in compliance with a court order, ~~and~~
40 ~~including days~~ credited to the period of confinement pursuant to

1 Section 4019, *and days served in home detention pursuant to*
2 *Section 1203.018*, shall be credited upon his or her term of
3 imprisonment, or credited to any fine on a proportional basis,
4 including, but not limited to, base fines and restitution fines, which
5 may be imposed, at the rate of not less than thirty dollars (\$30)
6 per day, or more, in the discretion of the court imposing the
7 sentence. If the total number of days in custody exceeds the number
8 of days of the term of imprisonment to be imposed, the entire term
9 of imprisonment shall be deemed to have been served. In any case
10 where the court has imposed both a prison or jail term of
11 imprisonment and a fine, any days to be credited to the defendant
12 shall first be applied to the term of imprisonment imposed, and
13 thereafter the remaining days, if any, shall be applied to the fine
14 on a proportional basis, including, but not limited to, base fines
15 and restitution fines.

16 (b) For the purposes of this section, credit shall be given only
17 where the custody to be credited is attributable to proceedings
18 related to the same conduct for which the defendant has been
19 convicted. Credit shall be given only once for a single period of
20 custody attributable to multiple offenses for which a consecutive
21 sentence is imposed.

22 (c) For the purposes of this section, “term of imprisonment”
23 includes any period of imprisonment imposed as a condition of
24 probation or otherwise ordered by a court in imposing or
25 suspending the imposition of any sentence, and also includes any
26 term of imprisonment, including any period of imprisonment prior
27 to release on parole and any period of imprisonment and parole,
28 prior to discharge, whether established or fixed by statute, by any
29 court, or by any duly authorized administrative agency.

30 (d) It shall be the duty of the court imposing the sentence to
31 determine the date or dates of any admission to, and release from,
32 custody prior to sentencing and the total number of days to be
33 credited pursuant to this section. The total number of days to be
34 credited shall be contained in the abstract of judgment provided
35 for in Section 1213.

36 (e) It shall be the duty of any agency to which a person is
37 committed to apply the credit provided for in this section for the
38 period between the date of sentencing and the date the person is
39 delivered to the agency.

1 (f) If a defendant serves time in a camp, work furlough facility,
2 halfway house, rehabilitation facility, hospital, juvenile detention
3 facility, similar residential facility, or home detention program
4 *pursuant to Section 1203.016, 1203.017, or 1203.018*, in lieu of
5 imprisonment in a county jail, and the statute under which the
6 defendant is sentenced requires a mandatory minimum period of
7 time in jail, the time spent in these facilities or programs shall
8 qualify as mandatory time in jail.

9 (g) Notwithstanding any other provision of this code as it
10 pertains to the sentencing of convicted offenders, nothing in this
11 section is to be construed as authorizing the sentencing of convicted
12 offenders to any of the facilities or programs mentioned herein.

13 ~~(h) This section shall become operative on January 1, 1999.~~

14 *SEC. 467. Section 2932 of the Penal Code is amended to read:*

15 2932. (a) (1) For any time credit accumulated pursuant to
16 Section 2931 ~~or to Section, 2933, or 4019~~, not more than 360 days
17 of credit may be denied or lost for a single act of murder, attempted
18 murder, solicitation of murder, manslaughter, rape, sodomy, or
19 oral copulation accomplished against the victim's will, attempted
20 rape, attempted sodomy, or attempted oral copulation accomplished
21 against the victim's will, assault or battery causing serious bodily
22 injury, assault with a deadly weapon or caustic substance, taking
23 of a hostage, escape with force or violence, or possession or
24 manufacture of a deadly weapon or explosive device, whether or
25 not prosecution is undertaken for purposes of this paragraph.
26 Solicitation of murder shall be proved by the testimony of two
27 witnesses, or of one witness and corroborating circumstances.

28 (2) Not more than 180 days of credit may be denied or lost for
29 a single act of misconduct, except as specified in paragraph (1),
30 which could be prosecuted as a felony whether or not prosecution
31 is undertaken.

32 (3) Not more than 90 days of credit may be denied or lost for a
33 single act of misconduct which could be prosecuted as a
34 misdemeanor, whether or not prosecution is undertaken.

35 (4) Not more than 30 days of credit may be denied or lost for a
36 single act of misconduct defined by regulation as a serious
37 disciplinary offense by the Department of Corrections *and*
38 *Rehabilitation*. Any person confined due to a change in custodial
39 classification following the commission of any serious disciplinary
40 infraction shall, in addition to any loss of time credits, be ineligible

1 to receive participation or worktime credit for a period not to
2 exceed the number of days of credit which have been lost for the
3 act of misconduct or 180 days, whichever is less. Any person
4 confined in a secure housing unit for having committed any
5 misconduct specified in paragraph (1) in which great bodily injury
6 is inflicted upon a nonprisoner shall, in addition to any loss of time
7 credits, be ineligible to receive participation or worktime credit
8 for a period not to exceed the number of days of credit which have
9 been lost for that act of misconduct. In unusual cases, an inmate
10 may be denied the opportunity to participate in a credit qualifying
11 assignment for up to six months beyond the period specified in
12 this subdivision if the ~~Director of Corrections~~ *Secretary of the*
13 *Department of Corrections and Rehabilitation, or for prisoners*
14 *confined in local facilities as specified in Section 4019, the sheriff*
15 *or director of the county correctional department, finds, after a*
16 *hearing, that no credit qualifying program may be assigned to the*
17 *inmate without creating a substantial risk of physical harm to staff*
18 *or other inmates. At the end of the six-month period and of*
19 *successive six-month periods, the denial of the opportunity to*
20 *participate in a credit qualifying assignment may be renewed upon*
21 *a hearing and finding by the* ~~director~~ *secretary, or for prisoners*
22 *confined in local facilities as specified in Section 4019, the sheriff*
23 *or director of the county correctional department.*

24 ~~The~~
25 (5) *The* prisoner may appeal the decision through the
26 department's review procedure, *or in the case of prisoners confined*
27 *in local facilities as specified in Section 4019, through the sheriff's*
28 *or director of the county correctional department's review*
29 *procedure, which shall include a review by an individual*
30 *independent of the institution who has supervisory authority over*
31 *the institution.*

32 (b) For any credit accumulated pursuant to Section 2931, not
33 more than 30 days of participation credit may be denied or lost for
34 a single failure or refusal to participate. Any act of misconduct
35 described by the Department of Corrections and Rehabilitation,
36 *or for prisoners confined in local facilities as specified in Section*
37 *4019, the sheriff or director of the county correctional department,*
38 *as a serious disciplinary infraction if committed while participating*
39 *in work, educational, vocational, therapeutic, or other prison*
40 *activity shall be deemed a failure to participate.*

(c) Any procedure not provided for by this section, but necessary to carry out the purposes of this section, shall be those procedures provided for by the Department of Corrections *and Rehabilitation* for serious disciplinary infractions if those procedures are not in conflict with this section, *or in the case of prisoners confined in local facilities as specified in Section 4019, by the sheriff or director of the county correctional department.*

(1) (A) The Department of Corrections *and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* shall, using reasonable diligence to investigate, provide written notice to the prisoner. The written notice shall be given within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, except that if the prisoner has escaped, the notice shall be given within 15 days of the prisoner's return to the custody of the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department.* The written notice shall include the specific charge, the date, the time, the place that the alleged misbehavior took place, the evidence relied upon, a written explanation of the procedures that will be employed at the proceedings and the prisoner's rights at the hearing. The hearing shall be conducted by an individual who shall be independent of the case and shall take place within 30 days of the written notice.

(B) ~~The Department of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department,* may delay written notice beyond 15 days when all of the following factors are true:

(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.

(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.

(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the

1 investigating officer makes a written request to delay notifying
2 that prisoner and states the reasons for the delay.

3 (iv) The warden of the institution, *or for prisoners confined in*
4 *local facilities as specified in Section 4019, the sheriff or director*
5 *of the county correctional department*, approves of the delay in
6 writing.

7 ~~The~~

8 (C) The period of delay under this paragraph shall not exceed
9 30 days. The prisoner's hearing shall take place within 30 days of
10 the written notice.

11 (2) The prisoner may elect to be assigned an employee to assist
12 in the investigation, preparation, or presentation of a defense at
13 the disciplinary hearing if it is determined by the department, *or*
14 *for prisoners confined in local facilities as specified in Section*
15 *4019, the sheriff or director of the county correctional department*,
16 that: ~~(i)~~ (A) the prisoner is illiterate; or ~~(ii)~~ (B) the complexity of
17 the issues or the prisoner's confinement status makes it unlikely
18 that the prisoner can collect and present the evidence necessary
19 for an adequate comprehension of the case.

20 (3) The prisoner may request witnesses to attend the hearing
21 and they shall be called unless the person conducting the hearing
22 has specific reasons to deny this request. The specific reasons shall
23 be set forth in writing and a copy of the document shall be
24 presented to the prisoner.

25 (4) The prisoner has the right, under the direction of the person
26 conducting the hearing, to question all witnesses.

27 (5) At the conclusion of the hearing the charge shall be
28 dismissed if the facts do not support the charge, or the prisoner
29 may be found guilty on the basis of a preponderance of the
30 evidence.

31 (d) If found guilty the prisoner shall be advised in writing of
32 the guilty finding and the specific evidence relied upon to reach
33 this conclusion and the amount of time-credit loss. The prisoner
34 may appeal the decision through the Department of ~~Corrections~~²
35 *Corrections and Rehabilitation's review procedure, or in the case*
36 *of prisoners confined in local facilities as specified in Section*
37 *4019, the review procedure established by the sheriff or the director*
38 *of the county correctional department*, and may, upon final
39 notification of appeal denial, within 15 days of the notification
40 demand review of the ~~department's~~ denial of credit to the Board

1 of ~~Prison Terms~~ *Parole Hearings*, or in the case of prisoners
2 confined in local facilities as specified in Section 4019, the court
3 with jurisdiction over the prisoner, and the board or the court may
4 affirm, reverse, or modify the department's decision or grant a
5 hearing before the board or the court at which hearing the prisoner
6 shall have the rights specified in Section 3041.5.

7 (e) Each prisoner subject to Section 2931 shall be notified of
8 the total amount of good behavior and participation credit which
9 may be credited pursuant to Section 2931, and his or her anticipated
10 time-credit release date. The prisoner shall be notified of any
11 change in the anticipated release date due to denial or loss of
12 credits, award of worktime credit, under Section 2933, or the
13 restoration of any credits previously forfeited.

14 (f) (1) If the conduct the prisoner is charged with also
15 constitutes a crime, the Department of Corrections and
16 Rehabilitation, or in the case of prisoners confined in local
17 facilities as specified in Section 4019, the sheriff or director of the
18 county correctional department, may refer the case to criminal
19 authorities for possible prosecution. The department, or in the case
20 of prisoners confined in local facilities as specified in Section
21 4019, the sheriff or director of the county correctional department,
22 shall notify the prisoner, who may request postponement of the
23 disciplinary proceedings pending the referral.

24 The
25 (2) The prisoner may revoke his or her request for postponement
26 of the disciplinary proceedings up until the filing of the accusatory
27 pleading. In the event of the revocation of the request for
28 postponement of the proceeding, the department or the court shall
29 hold the hearing within 30 days of the revocation.

30 Notwithstanding
31 (3) Notwithstanding the notification requirements in this
32 paragraph and subparagraphs (A) and (B) of paragraph (1) of
33 subdivision (c), in the event the case is referred to criminal
34 authorities for prosecution and the authority requests that the
35 prisoner not be notified so as to protect the confidentiality of its
36 investigation, no notice to the prisoner shall be required until an
37 accusatory pleading is filed with the court, or the authority notifies
38 the warden, in writing, that it will not prosecute or it authorizes
39 the notification of the prisoner. The notice exceptions provided
40 for in this paragraph shall only apply if the criminal authority

1 requests of the warden, in writing, and within the 15 days provided
2 in subparagraph (A) of paragraph (1) of subdivision (c), that the
3 prisoner not be notified. Any period of delay of notice to the
4 prisoner shall not exceed 30 days beyond the 15 days referred to
5 in subdivision (c). In the event that no prosecution is undertaken,
6 the procedures in subdivision (c) shall apply, and the time periods
7 set forth in that subdivision shall commence to run from the date
8 the warden is notified in writing of the decision not to prosecute.
9 In the event the authority either cancels its requests that the prisoner
10 not be notified before it makes a decision on prosecution or files
11 an accusatory pleading, the provisions of this paragraph shall apply
12 as if no request had been received, beginning from the date of the
13 cancellation or filing.

14 ~~In~~

15 (4) *In the case where the prisoner is prosecuted by the district*
16 *attorney, the Department of Corrections and Rehabilitation, or in*
17 *the case of prisoners confined in local facilities as specified in*
18 *Section 4019, the sheriff or the director of the county department*
19 *of corrections,* shall not deny time credit where the prisoner is
20 found not guilty and may deny credit if the prisoner is found guilty,
21 in which case the procedures in subdivision (c) shall not apply.

22 (g) If time credit denial proceedings or criminal prosecution
23 prohibit the release of a prisoner who would have otherwise been
24 released, and the prisoner is found not guilty of the alleged
25 misconduct, the amount of time spent incarcerated, in excess of
26 what the period of incarceration would have been absent the alleged
27 misbehavior, shall be deducted from the prisoner's parole period.

28 (h) Nothing in the amendments to this section made at the
29 1981–82 Regular Session of the Legislature shall affect the granting
30 or revocation of credits attributable to that portion of the prisoner's
31 sentence served prior to January 1, 1983.

32 *SEC. 468. Section 3000 of the Penal Code is amended to read:*

33 3000. (a) (1) The Legislature finds and declares that the period
34 immediately following incarceration is critical to successful
35 reintegration of the offender into society and to positive citizenship.
36 It is in the interest of public safety for the state to provide for the
37 effective supervision of and surveillance of parolees, including
38 the judicious use of revocation actions, and to provide educational,
39 vocational, family and personal counseling necessary to assist
40 parolees in the transition between imprisonment and discharge. A

1 sentence pursuant to Section 1168 or 1170 shall include a period
2 of parole, unless waived, or as otherwise provided in this article.

3 (2) The Legislature finds and declares that it is not the intent of
4 this section to diminish resources allocated to the Department of
5 Corrections and Rehabilitation for parole functions for which the
6 department is responsible. It is also not the intent of this section
7 to diminish the resources allocated to the Board of Parole Hearings
8 to execute its duties with respect to parole functions for which the
9 board is responsible.

10 (3) The Legislature finds and declares that diligent effort must
11 be made to ensure that parolees are held accountable for their
12 criminal behavior, including, but not limited to, the satisfaction of
13 restitution fines and orders.

14 (4) The parole period of any person found to be a sexually
15 violent predator shall be tolled until that person is found to no
16 longer be a sexually violent predator, at which time the period of
17 parole, or any remaining portion thereof, shall begin to run.

18 (b) Notwithstanding any provision to the contrary in Article 3
19 (commencing with Section 3040) of this chapter, the following
20 shall apply *to any inmate subject to Section 3000.08*:

21 (1) In the case of any inmate sentenced under Section 1168, the
22 period of parole shall not exceed five years in the case of an inmate
23 imprisoned for any offense other than first or second degree murder
24 for which the inmate has received a life sentence, and shall not
25 exceed three years in the case of any other inmate, unless in either
26 case the ~~parole authority~~ *court* for good cause waives parole and
27 discharges the inmate from custody of the department. This
28 subdivision shall also be applicable to inmates who committed
29 crimes prior to July 1, 1977, to the extent specified in Section
30 1170.2.

31 (2) At the expiration of a term of imprisonment of one year and
32 one day, or a term of imprisonment imposed pursuant to Section
33 1170 or at the expiration of a term reduced pursuant to Section
34 2931 or 2933, if applicable, the inmate shall be released on parole
35 for a period not exceeding three years, except that any inmate
36 sentenced for an offense specified in paragraph (3), (4), (5), (6),
37 (11), or (18) of subdivision (c) of Section 667.5 shall be released
38 on parole for a period not exceeding 10 years, unless a longer
39 period of parole is specified in Section 3000.1.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to subdivision (b) of Section 209, with the intent to commit a specified sex offense, or Section 667.51, 667.61, or 667.71, the period of parole shall be 10 years, unless a longer period of parole is specified in Section 3000.1.

(4) (A) Notwithstanding paragraphs (1) to (3), inclusive, in the case of a person convicted of and required to register as a sex offender for the commission of an offense specified in Section 261, 262, 264.1, 286, 288a, paragraph (1) of subdivision (b) of Section 288, Section 288.5, or 289, in which one or more of the victims of the offense was a child under 14 years of age, the period of parole shall be 20 years *and six months* unless the ~~board~~ court, for good cause, determines that the person will be retained on parole. The ~~board~~ court shall make a written record of this determination and transmit a copy of it to the parolee.

(B) In the event of a retention on parole, the parolee shall be entitled to a review by the ~~board~~ court each year thereafter.

(C) There shall be a *court* hearing ~~as provided consistent with the procedures set forth in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole order returning the parolee to custody~~ to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The ~~panel or board~~ court shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(D) The provisions of Section 3042 shall not apply to any hearing held pursuant to this subdivision.

(5) The ~~parole authority~~ court shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(6) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), (3), or (4), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of

1 the maximum statutory period of parole under this subdivision and
2 paragraphs (1), (2), (3), and (4) shall be computed from the date
3 of initial parole and shall be a period chronologically determined.
4 Time during which parole is suspended because the prisoner has
5 absconded or has been returned to custody as a parole violator
6 shall not be credited toward any period of parole unless the prisoner
7 is found not guilty of the parole violation. However, the period of
8 parole is subject to the following:

9 (A) Except as provided in Section 3064, in no case may a
10 prisoner subject to three years on parole be retained under parole
11 supervision or in custody for a period longer than four years from
12 the date of his or her initial parole.

13 (B) Except as provided in Section 3064, in no case may a
14 prisoner subject to five years on parole be retained under parole
15 supervision or in custody for a period longer than seven years from
16 the date of his or her initial parole.

17 (C) Except as provided in Section 3064, in no case may a
18 prisoner subject to 10 years on parole be retained under parole
19 supervision or in custody for a period longer than 15 years from
20 the date of his or her initial parole.

21 (7) The Department of Corrections and Rehabilitation shall meet
22 with each inmate at least 30 days prior to his or her good time
23 release date and shall provide, under guidelines specified by the
24 parole authority *or the department, whichever is applicable*, the
25 conditions of parole and the length of parole up to the maximum
26 period of time provided by law. The inmate has the right to
27 reconsideration of the length of parole and conditions thereof by
28 the *department or the parole authority, whichever is applicable*.
29 The Department of Corrections and Rehabilitation or the Board
30 of Parole Hearings may impose as a condition of parole that a
31 prisoner make payments on the prisoner's outstanding restitution
32 fines or orders imposed pursuant to subdivision (a) or (c) of Section
33 13967 of the Government Code, as operative prior to September
34 28, 1994, or subdivision (b) or (f) of Section 1202.4.

35 (8) For purposes of this chapter, the Board of Parole Hearings,
36 *or where applicable, the court*, shall be considered the parole
37 authority.

38 (9) The sole authority to issue warrants for the return to actual
39 custody of any state prisoner released on parole rests with the
40 ~~Board of Parole Hearings~~ *court*, except for any escaped state

1 prisoner or any state prisoner released prior to his or her scheduled
2 release date who should be returned to custody, and Section 3060
3 shall apply.

4 (10) It is the intent of the Legislature that efforts be made with
5 respect to persons who are subject to Section 290.011 who are on
6 parole to engage them in treatment.

7 *SEC. 469. Section 3000.08 is added to the Penal Code, to read:*

8 *3000.08. (a) Persons released from state prison on or after*
9 *July 1, 2011, after serving a prison term for any of the following*
10 *felonies shall be subject to parole supervision by the Department*
11 *of Corrections and Rehabilitation and the jurisdiction of the court*
12 *in the county into which the parolee is released:*

13 *(1) A serious felony as described in subdivision (c) of Section*
14 *1192.7.*

15 *(2) A violent felony as described in subdivision (c) of Section*
16 *667.5.*

17 *(3) A crime for which the person was sentenced pursuant to*
18 *paragraph (2) of subdivision (e) of Section 667 or paragraph (2)*
19 *of subdivision (c) of Section 1170.12.*

20 *(4) Any crime where the person eligible for release from prison*
21 *is classified as a High Risk Sex Offender.*

22 *(b) Notwithstanding any other provision of law, all other*
23 *offenders released from prison shall be placed on postrelease*
24 *supervision pursuant to Title 2.05 (commencing with Section 3450).*

25 *(c) At any time during the period of parole of a person subject*
26 *to this section, if any parole agent or peace officer has probable*
27 *cause to believe that the parolee is violating any term or condition*
28 *of his or her parole, the agent or officer may, without warrant or*
29 *other process and at any time until the final disposition of the case,*
30 *arrest the person and bring him or her before the court or the*
31 *court may, in its discretion, issue a warrant for that person's arrest.*

32 *(d) Upon a hearing on the alleged violation and a finding of*
33 *good cause that the parolee has committed a violation of law or*
34 *violated his or her conditions of parole, the court may impose*
35 *additional and appropriate conditions of supervision, including*
36 *rehabilitation and treatment services and appropriate incentives*
37 *for compliance, and impose immediate, structured, and graduated*
38 *sanctions for parole violations, including imprisonment in a county*
39 *jail.*

1 (e) (1) Upon its own motion or upon the petition of the parolee,
2 parole agent, or the district attorney of the county in which the
3 parolee is supervised, the court may modify the parole of the
4 parolee pursuant to subdivision (b) of this subdivision. The court
5 shall give notice of its motion, and the parole agent or the district
6 attorney shall give notice of his or her petition to the parolee, his
7 or her attorney of record, and the district attorney or the parole
8 agent, as the case may be. The parolee shall give notice of his or
9 her petition to the parole agent and notice of any motion or petition
10 shall be given to the district attorney in all cases. The court shall
11 refer its motion or the petition to the parole agent, and the parole
12 agent shall prepare a written report regarding the facts and
13 circumstances of the motion or petition to modify parole.

14 (2) After the receipt of a written report from the parole agent,
15 the court shall read and consider the report and either its motion
16 or the petition, and may modify the parole of the parolee upon the
17 grounds set forth in subdivision (b) if the interests of justice so
18 require. Upon the agreement by the parolee in writing to the
19 specific terms of a modification of a specific term of parole, any
20 requirement that the parolee make a personal appearance in court
21 for the purpose of a modification shall be waived.

22 (3) Prior to the modification of a specific term of parole and
23 waiver of appearance, the parolee shall be informed of his or her
24 right to consult with counsel if the modification of parole requires
25 the parolee to serve a period of time in jail in excess of 14 days,
26 or if the parolee is indigent, inform him or her of the right to secure
27 court appointed counsel. If the parolee waives his or her right to
28 counsel, a written waiver shall be required. If the parolee consults
29 with counsel and thereafter agrees to a modification of the term
30 of parole and waiver of personal appearance, the agreement shall
31 be signed by counsel showing approval for the modification of
32 parole and waiver of appearance.

33 (f) Notwithstanding any other provision of law, in any case
34 where Section 3000.1 applies to a person who is on parole and
35 there is good cause to believe that the person has committed a
36 violation of law or violated his or her conditions of parole, and
37 there is imposed a period of imprisonment of longer than 30 days,
38 that person shall be remanded to the custody of the Department
39 of Corrections and Rehabilitation and the jurisdiction of the Board
40 of Parole Hearings for the purpose of future parole consideration.

1 *SEC. 470. Section 3000.09 is added to the Penal Code, to read:*

2 *3000.09. (a) Notwithstanding any other law, any parolee who*
3 *was paroled from state prison prior to July 1, 2011, shall be subject*
4 *to this section.*

5 *(b) Parolees subject to this section shall remain under*
6 *supervision by the Department of Corrections and Rehabilitation*
7 *until one of the following occurs:*

8 *(1) Jurisdiction over the person is terminated by operation of*
9 *law.*

10 *(2) The supervising agent recommends to the jurisdictional*
11 *authority that the offender be discharged and the jurisdictional*
12 *authority approves the discharge.*

13 *(3) The offender, except an offender who if released from prison*
14 *after July 1, 2011, would be subject to parole based on the criteria*
15 *identified in subdivision (a) of Section 3000.08, completes six*
16 *consecutive months of parole without violating their conditions,*
17 *at which time the supervising agent shall review and make a*
18 *recommendation on whether to discharge the offender to the*
19 *jurisdictional authority and the jurisdictional authority approves*
20 *the discharge.*

21 *(c) Parolees subject to this section who are being held for a*
22 *parole violation in county jail on July 1, 2011, shall be subject to*
23 *the jurisdiction of the Board of Parole Hearings.*

24 *(d) Persons who are subject to this section and on parole for a*
25 *serious felony described in subdivision (c) of Section 1192.7, a*
26 *violent felony described in subdivision (c) of Section 667.5, a crime*
27 *for which the person was sentenced pursuant to paragraph (2) of*
28 *subdivision (e) of Section 667 or paragraph (2) of subdivision (c)*
29 *of Section 1170.12, or any crime where the person released from*
30 *prison was classified as a High Risk Sex Offender, whose parole*
31 *is revoked, as ordered by the Board of Parole Hearings, shall be*
32 *remanded to state prison. Upon completion of a revocation term*
33 *for imprisonment in state prison, the parolee shall remain under*
34 *the supervision of the Division of Adult Parole Operations. Any*
35 *subsequent revocation action shall be conducted by the court in*
36 *the county into which the parolee was released. Any subsequent*
37 *term of imprisonment as ordered by the court for a violation of*
38 *the person's conditions of parole shall be subject to Section*
39 *3000.08.*

(e) Parolees subject to this section who are not on parole for a crime or with a classification described in subdivision (c) who violate the conditions of their parole on or after July 1, 2011, shall be under the jurisdiction of the court in the county into which the parolee was released. Persons returned to custody for any violation of a parole condition, as ordered by the court, shall serve any custody term in county jail.

(f) This section shall remain in effect until July 1, 2014, and on that date and thereafter any person, who is not on parole for a crime or with a classification described in subdivision (c), shall be discharged from parole.

SEC. 471. Section 3000.1 of the Penal Code is amended to read:

3000.1. (a) (1) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(2) Notwithstanding any other provision of law, in the case of any inmate sentenced to a life term under subdivision (b) of Section 209, if that offense was committed with the intent to commit a specified sexual offense, Sections 269 and 288.7, subdivision (c) of Section 667.51, Section 667.71 in which one or more of the victims of the offense was a child under 14 years of age, or subdivision (j), (l), or (m) of Section 667.61, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the ~~board~~ court shall, within 30 days, discharge that person from parole, unless the ~~board~~ court, for good cause, determines that the person will be retained on parole. The ~~board~~ court shall make a written record of its determination and transmit a copy of it to the parolee.

(c) In the event of a retention on parole pursuant to subdivision (b), the parolee shall be entitled to a review by the ~~board~~ court each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 3041.7 within 12 months of the date of any revocation of parole pursuant to subdivision (d) of Section 3000.08 to consider the release of the inmate on parole and, notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

SEC. 472. Section 3001 of the Penal Code is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison, and has been on parole continuously for ~~one year~~ *six months* since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections *and Rehabilitation* recommends to the ~~Board of Prison Terms~~ *court* that the person be retained on parole and the ~~board~~ *court*, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the ~~board~~ *court* that the person be retained on parole and the ~~board~~ *court*, for good cause, determines that the person will be retained. The ~~board~~ *court* shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

1 (b) Notwithstanding any other provision of law, when any person
2 referred to in paragraph (2) of subdivision (b) of Section 3000 has
3 been released on parole from the state prison, and has been on
4 parole continuously for three years since release from confinement,
5 the ~~board~~ court shall discharge, within 30 days, the person from
6 parole, unless the ~~board~~ court, for good cause, determines that the
7 person will be retained on parole. The ~~board~~ court shall ~~make a~~
8 ~~written record of its determination~~ *state its findings on the record*
9 and the department shall transmit a copy ~~thereof~~ *of those findings*
10 to the parolee.

11 (c) Notwithstanding any other provision of law, when any person
12 referred to in paragraph (3) of subdivision (b) of Section 3000 has
13 been released on parole from the state prison, and has been on
14 parole continuously for six years *and six months* since release from
15 confinement, the ~~board~~ court shall discharge, within 30 days, the
16 person from parole, unless the ~~board~~ court, for good cause,
17 determines that the person will be retained on parole. The ~~board~~
18 *court* shall make a written record of its determination and the
19 department shall transmit a copy thereof to the parolee.

20 (d) In the event of a retention on parole, the parolee shall be
21 entitled to a review by the parole authority each year thereafter
22 until the maximum statutory period of parole has expired.

23 (e) The amendments to this section made during the 1987–88
24 Regular Session of the Legislature shall only be applied
25 prospectively and shall not extend the parole period for any person
26 whose eligibility for discharge from parole was fixed as of the
27 effective date of those amendments.

28 *SEC. 473. Section 3003 of the Penal Code is amended to read:*

29 3003. (a) Except as otherwise provided in this section, an
30 inmate who is released on parole *or postrelease supervision as*
31 *provided by Title 2.05 (commencing with Section 3450)* shall be
32 returned to the county that was the last legal residence of the inmate
33 prior to his or her incarceration. For purposes of this subdivision,
34 “last legal residence” shall not be construed to mean the county
35 wherein the inmate committed an offense while confined in a state
36 prison or local jail facility or while confined for treatment in a
37 state hospital.

38 (b) Notwithstanding subdivision (a), an inmate may be returned
39 to another county if that would be in the best interests of the public.
40 If the Board of Parole Hearings setting the conditions of parole

1 for inmates sentenced pursuant to subdivision (b) of Section 1168,
2 as determined by the parole consideration panel, or the Department
3 of Corrections and Rehabilitation setting the conditions of parole
4 for inmates sentenced pursuant to Section 1170, decides on a return
5 to another county, it shall place its reasons in writing in the
6 parolee's permanent record and include these reasons in the notice
7 to the sheriff or chief of police pursuant to Section 3058.6. In
8 making its decision, the paroling authority shall consider, among
9 others, the following factors, giving the greatest weight to the
10 protection of the victim and the safety of the community:

11 (1) The need to protect the life or safety of a victim, the parolee,
12 a witness, or any other person.

13 (2) Public concern that would reduce the chance that the
14 inmate's parole would be successfully completed.

15 (3) The verified existence of a work offer, or an educational or
16 vocational training program.

17 (4) The existence of family in another county with whom the
18 inmate has maintained strong ties and whose support would
19 increase the chance that the inmate's parole would be successfully
20 completed.

21 (5) The lack of necessary outpatient treatment programs for
22 parolees receiving treatment pursuant to Section 2960.

23 (c) The Department of Corrections and Rehabilitation, in
24 determining an out-of-county commitment, shall give priority to
25 the safety of the community and any witnesses and victims.

26 (d) In making its decision about an inmate who participated in
27 a joint venture program pursuant to Article 1.5 (commencing with
28 Section 2717.1) of Chapter 5, the paroling authority shall give
29 serious consideration to releasing him or her to the county where
30 the joint venture program employer is located if that employer
31 states to the paroling authority that he or she intends to employ
32 the inmate upon release.

33 (e) (1) The following information, if available, shall be released
34 by the Department of Corrections and Rehabilitation to local law
35 enforcement agencies regarding a paroled inmate *or inmate placed*
36 *on postrelease supervision pursuant to Title 2.05 (commencing*
37 *with Section 3450)* who is released in their jurisdictions:

38 (A) Last, first, and middle name.

39 (B) Birth date.

40 (C) Sex, race, height, weight, and hair and eye color.

1 (D) Date of parole and discharge.

2 (E) Registration status, if the inmate is required to register as a
3 result of a controlled substance, sex, or arson offense.

4 (F) California Criminal Information Number, FBI number, social
5 security number, and driver's license number.

6 (G) County of commitment.

7 (H) A description of scars, marks, and tattoos on the inmate.

8 (I) Offense or offenses for which the inmate was convicted that
9 resulted in parole in this instance.

10 (J) Address, including all of the following information:

11 (i) Street name and number. Post office box numbers are not
12 acceptable for purposes of this subparagraph.

13 (ii) City and ZIP Code.

14 (iii) Date that the address provided pursuant to this subparagraph
15 was proposed to be effective.

16 (K) Contact officer and unit, including all of the following
17 information:

18 (i) Name and telephone number of each contact officer.

19 (ii) Contact unit type of each contact officer such as units
20 responsible for parole, registration, or county probation.

21 (L) A digitized image of the photograph and at least a single
22 digit fingerprint of the parolee.

23 (M) A geographic coordinate for the parolee's residence location
24 for use with a Geographical Information System (GIS) or
25 comparable computer program.

26 (2) The information required by this subdivision shall come
27 from the statewide parolee database. The information obtained
28 from each source shall be based on the same timeframe.

29 (3) All of the information required by this subdivision shall be
30 provided utilizing a computer-to-computer transfer in a format
31 usable by a desktop computer system. The transfer of this
32 information shall be continually available to local law enforcement
33 agencies upon request.

34 (4) The unauthorized release or receipt of the information
35 described in this subdivision is a violation of Section 11143.

36 (f) Notwithstanding any other provision of law, an inmate who
37 is released on parole shall not be returned to a location within 35
38 miles of the actual residence of a victim of, or a witness to, a
39 violent felony as defined in paragraphs (1) to (7), inclusive, and
40 paragraph (16) of subdivision (c) of Section 667.5 or a felony in

1 which the defendant inflicts great bodily injury on any person other
2 than an accomplice that has been charged and proved as provided
3 for in Section 12022.53, 12022.7, or 12022.9, if the victim or
4 witness has requested additional distance in the placement of the
5 inmate on parole, and if the Board of Parole Hearings or the
6 Department of Corrections and Rehabilitation finds that there is a
7 need to protect the life, safety, or well-being of a victim or witness.

8 (g) Notwithstanding any other law, an inmate who is released
9 on parole for a violation of Section 288 or 288.5 whom the
10 Department of Corrections and Rehabilitation determines poses a
11 high risk to the public shall not be placed or reside, for the duration
12 of his or her parole, within one-half mile of any public or private
13 school including any or all of kindergarten and grades 1 to 12,
14 inclusive.

15 (h) Notwithstanding any other law, an inmate who is released
16 on parole for an offense involving stalking shall not be returned
17 to a location within 35 miles of the victim's actual residence or
18 place of employment if the victim or witness has requested
19 additional distance in the placement of the inmate on parole, and
20 if the Board of Parole Hearings or the Department of Corrections
21 and Rehabilitation finds that there is a need to protect the life,
22 safety, or well-being of the victim.

23 (i) The authority shall give consideration to the equitable
24 distribution of parolees and the proportion of out-of-county
25 commitments from a county compared to the number of
26 commitments from that county when making parole decisions.

27 (j) An inmate may be paroled to another state pursuant to any
28 other law. *The Department of Corrections and Rehabilitation shall*
29 *coordinate with local entities regarding the placement of inmates*
30 *placed out of state on postrelease supervision pursuant to Title*
31 *2.05 (commencing with Section 3450).*

32 (k) (1) Except as provided in paragraph (2), the Department of
33 Corrections and Rehabilitation shall be the agency primarily
34 responsible for, and shall have control over, the program, resources,
35 and staff implementing the Law Enforcement Automated Data
36 System (LEADS) in conformance with subdivision (e). *County*
37 *agencies supervising inmates released to postrelease supervision*
38 *pursuant to Title 2.05 (commencing with Section 3450) shall*
39 *provide any information requested by the department to ensure*
40 *the availability of accurate information regarding inmates released*

1 from state prison. This information may include the issuance of
2 warrants, revocations, or the termination of postrelease
3 supervision.

4 (2) Notwithstanding paragraph (1), the Department of Justice
5 shall be the agency primarily responsible for the proper release of
6 information under LEADS that relates to fingerprint cards.

7 SEC. 474. Section 3056 of the Penal Code is amended to read:

8 3056. (a) Prisoners on parole shall remain under the legal
9 custody of the department ~~and but shall not be subject at any time~~
10 ~~to be taken back within the inclosure of the prison returned to~~
11 ~~prison except as provided in subdivision (b).~~

12 (b) Inmates paroled pursuant to Section 3000.1 may be returned
13 to prison following the revocation of parole by a court pursuant
14 to Section 3000.08.

15 SEC. 475. Section 3057 of the Penal Code, as amended by
16 Section 10 of Chapter 747 of the Statutes of 2007, is amended to
17 read:

18 3057. (a) Confinement pursuant to a revocation of parole in
19 the absence of a new conviction and commitment to prison under
20 other provisions of law, shall not exceed 12 months, except as
21 provided in subdivision (c).

22 (b) Upon completion of confinement pursuant to parole
23 revocation without a new commitment to prison, the inmate shall
24 be released on parole for a period which shall not extend beyond
25 that portion of the maximum statutory period of parole specified
26 by Section 3000 which was unexpired at the time of each
27 revocation.

28 (c) Notwithstanding the limitations in subdivision (a) and in
29 Section 3060.5 upon confinement pursuant to a parole revocation,
30 the parole authority may extend the confinement pursuant to parole
31 revocation for a maximum of an additional 12 months for
32 subsequent acts of misconduct committed by the parolee while
33 confined pursuant to that parole revocation. Upon a finding of
34 good cause to believe that a parolee has committed a subsequent
35 act of misconduct and utilizing procedures governing parole
36 revocation proceedings, the parole authority may extend the period
37 of confinement pursuant to parole revocation as follows: (1) not
38 more than 180 days for an act punishable as a felony, whether or
39 not prosecution is undertaken, (2) not more than 90 days for an
40 act punishable as a misdemeanor, whether or not prosecution is

1 undertaken, and (3) not more than 30 days for an act defined as a
2 serious disciplinary offense pursuant to subdivision (a) of Section
3 2932.

4 (d) (1) Except for parolees specified in paragraph (2), any
5 revocation period imposed under subdivision (a) may be reduced
6 in the same manner and to the same extent as a term of
7 imprisonment may be reduced by worktime credits under Section
8 2933. Worktime credit must be earned and may be forfeited
9 pursuant to the provisions of Section 2932.

10 Worktime credit forfeited shall not be restored.

11 (2) The following parolees shall not be eligible for credit under
12 this subdivision:

13 (A) Parolees who are sentenced under Section 1168 with a
14 maximum term of life imprisonment.

15 (B) Parolees who violated a condition of parole relating to
16 association with specified persons, entering prohibited areas,
17 attendance at parole outpatient clinics, or psychiatric attention.

18 (C) Parolees who were revoked for conduct described in, or that
19 could be prosecuted under any of the following sections, whether
20 or not prosecution is undertaken: Section 189, Section 191.5,
21 subdivision (a) of Section 192, subdivision (a) of Section 192.5,
22 Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of
23 Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
24 of Section 245, paragraph (2) or (6) of subdivision (a) of Section
25 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section
26 264.1, subdivision (c) or (d) of Section 286, Section 288,
27 subdivision (c) or (d) of Section 288a, subdivision (a) of Section
28 289, 347, or 404, subdivision (a) of Section 451, Section 12020,
29 12021, 12022, 12022.5, 12022.53, 12022.7, 12022.8, 12025, or
30 12560, or Section 664 for any attempt to engage in conduct
31 described in or that could be prosecuted under any of the
32 above-mentioned sections.

33 (D) Parolees who were revoked for any reason if they had been
34 granted parole after conviction of any of the offenses specified in
35 subparagraph (C).

36 (E) Parolees who the parole authority finds at a revocation
37 hearing to be unsuitable for reduction of the period of confinement
38 because of the circumstances and gravity of the parole violation,
39 or because of prior criminal history.

1 (e) Commencing July 1, 2011, this section shall only apply to
2 inmates sentenced to a term of life imprisonment.

3 SEC. 476. Section 3057 of the Penal Code, as amended by
4 Section 83 of Chapter 178 of the Statutes of 2010, is amended to
5 read:

6 3057. (a) Confinement pursuant to a revocation of parole in
7 the absence of a new conviction and commitment to prison under
8 other provisions of law, shall not exceed 12 months, except as
9 provided in subdivision (c).

10 (b) Upon completion of confinement pursuant to parole
11 revocation without a new commitment to prison, the inmate shall
12 be released on parole for a period which shall not extend beyond
13 that portion of the maximum statutory period of parole specified
14 by Section 3000 which was unexpired at the time of each
15 revocation.

16 (c) Notwithstanding the limitations in subdivision (a) and in
17 Section 3060.5 upon confinement pursuant to a parole revocation,
18 the parole authority may extend the confinement pursuant to parole
19 revocation for a maximum of an additional 12 months for
20 subsequent acts of misconduct committed by the parolee while
21 confined pursuant to that parole revocation. Upon a finding of
22 good cause to believe that a parolee has committed a subsequent
23 act of misconduct and utilizing procedures governing parole
24 revocation proceedings, the parole authority may extend the period
25 of confinement pursuant to parole revocation as follows: (1) not
26 more than 180 days for an act punishable as a felony, whether or
27 not prosecution is undertaken, (2) not more than 90 days for an
28 act punishable as a misdemeanor, whether or not prosecution is
29 undertaken, and (3) not more than 30 days for an act defined as a
30 serious disciplinary offense pursuant to subdivision (a) of Section
31 2932.

32 (d) (1) Except for parolees specified in paragraph (2), any
33 revocation period imposed under subdivision (a) may be reduced
34 in the same manner and to the same extent as a term of
35 imprisonment may be reduced by worktime credits under Section
36 2933. Worktime credit must be earned and may be forfeited
37 pursuant to the provisions of Section 2932.

38 Worktime credit forfeited shall not be restored.

39 (2) The following parolees shall not be eligible for credit under
40 this subdivision:

1 (A) Parolees who are sentenced under Section 1168 with a
2 maximum term of life imprisonment.

3 (B) Parolees who violated a condition of parole relating to
4 association with specified persons, entering prohibited areas,
5 attendance at parole outpatient clinics, or psychiatric attention.

6 (C) Parolees who were revoked for conduct described in, or that
7 could be prosecuted under any of the following sections, whether
8 or not prosecution is undertaken: Section 189, Section 191.5,
9 subdivision (a) of Section 192, subdivision (a) of Section 192.5,
10 Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of
11 Section 241, Section 244, paragraph (1) or (2) of subdivision (a)
12 of Section 245, paragraph (2) or (6) of subdivision (a) of Section
13 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section
14 264.1, subdivision (c) or (d) of Section 286, Section 288,
15 subdivision (c) or (d) of Section 288a, subdivision (a) of Section
16 289, 347, or 404, subdivision (a) of Section 451, Section 12022,
17 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2
18 (commencing with Section 29800) of Division 9 of Title 4 of Part
19 6, any provision listed in Section 16590, or Section 664 for any
20 attempt to engage in conduct described in or that could be
21 prosecuted under any of the above-mentioned sections.

22 (D) Parolees who were revoked for any reason if they had been
23 granted parole after conviction of any of the offenses specified in
24 subparagraph (C).

25 (E) Parolees who the parole authority finds at a revocation
26 hearing to be unsuitable for reduction of the period of confinement
27 because of the circumstances and gravity of the parole violation,
28 or because of prior criminal history.

29 *(e) Commencing July 1, 2011, this section shall only apply to*
30 *inmates sentenced to a term of life imprisonment.*

31 *SEC. 477. Section 3060 of the Penal Code is repealed.*

32 ~~3060. The parole authority shall have full power to suspend or~~
33 ~~revoke any parole, and to order returned to prison any prisoner~~
34 ~~upon parole. The written order of the parole authority shall be a~~
35 ~~sufficient warrant for any peace or prison officer to return to actual~~
36 ~~custody any conditionally released or paroled prisoner.~~

37 *SEC. 478. Section 3061 of the Penal Code is repealed.*

38 ~~3061. It is hereby made the duty of all peace officers to execute~~
39 ~~any such order in like manner as ordinary criminal process.~~

1 *SEC. 479. Title 2.05 (commencing with Section 3450) is added*
2 *to Part 3 of the Penal Code, to read:*

3
4 *TITLE 2.05. POSTRELEASE COMMUNITY SUPERVISION*
5 *ACT OF 2011*
6

7 3450. (a) *This act shall be known and may be cited as the*
8 *Postrelease Community Supervision Act of 2011.*

9 (b) *The Legislature finds and declares all of the following:*

10 (1) *The Legislature reaffirms its commitment to reducing*
11 *recidivism among criminal offenders.*

12 (2) *Despite the dramatic increase in corrections spending over*
13 *the past two decades, national reincarceration rates for people*
14 *released from prison remain unchanged or have worsened.*
15 *National data show that about 40 percent of released individuals*
16 *are reincarcerated within three years. In California, the recidivism*
17 *rate for persons who have served time in prison is even greater*
18 *than the national average.*

19 (3) *Criminal justice policies that rely on the reincarceration of*
20 *parolees for technical violations do not result in improved public*
21 *safety.*

22 (4) *California must reinvest its criminal justice resources to*
23 *support community corrections programs and evidence-based*
24 *practices that will achieve improved public safety returns on this*
25 *state's substantial investment in its criminal justice system.*

26 (5) *Realigning the postrelease supervision of certain felons*
27 *reentering the community after serving a prison term to local*
28 *community corrections programs, which are strengthened through*
29 *community-based punishment, evidence-based practices, and*
30 *improved supervision strategies, will improve public safety*
31 *outcomes among adult felon parolees and will facilitate their*
32 *successful reintegration back into society.*

33 (6) *Community corrections programs require a partnership*
34 *between local public safety entities and the county to provide and*
35 *expand the use of community-based punishment for offenders*
36 *paroled from state prison. Each county's local Community*
37 *Corrections Partnership, as established in paragraph (2) of*
38 *subdivision (b) of Section 1230, should play a critical role in*
39 *developing programs and ensuring appropriate outcomes for*
40 *persons subject to postrelease community supervision.*

1 (7) *Fiscal policy and correctional practices should align to*
2 *promote a justice reinvestment strategy that fits each county.*
3 *“Justice reinvestment” is a data-driven approach to reduce*
4 *corrections and related criminal justice spending and reinvest*
5 *savings in strategies designed to increase public safety. The*
6 *purpose of justice reinvestment is to manage and allocate criminal*
7 *justice populations more cost-effectively, generating savings that*
8 *can be reinvested in evidence-based strategies that increase public*
9 *safety while holding offenders accountable.*

10 (8) *“Community-based punishment” means evidence-based*
11 *correctional sanctions and programming encompassing a range*
12 *of custodial and noncustodial responses to criminal or*
13 *noncompliant offender activity. Intermediate sanctions may be*
14 *provided by local public safety entities directly or through public*
15 *or private correctional service providers and include, but are not*
16 *limited to, the following:*

17 (A) *Short-term “flash” incarceration in jail for a period of not*
18 *more than seven days.*

19 (B) *Intensive community supervision.*

20 (C) *Home detention with electronic monitoring or GPS*
21 *monitoring.*

22 (D) *Mandatory community service.*

23 (E) *Restorative justice programs, such as mandatory victim*
24 *restitution and victim-offender reconciliation.*

25 (F) *Work, training, or education in a furlough program pursuant*
26 *to Section 1208.*

27 (G) *Work, in lieu of confinement, in a work release program*
28 *pursuant to Section 4024.2.*

29 (H) *Day reporting.*

30 (I) *Mandatory residential or nonresidential substance abuse*
31 *treatment programs.*

32 (J) *Mandatory random drug testing.*

33 (K) *Mother-infant care programs.*

34 (L) *Community-based residential programs offering structure,*
35 *supervision, drug treatment, alcohol treatment, literacy*
36 *programming, employment counseling, psychological counseling,*
37 *mental health treatment, or any combination of these and other*
38 *interventions.*

39 (9) *“Evidence-based practices” refers to supervision policies,*
40 *procedures, programs, and practices demonstrated by scientific*

1 *research to reduce recidivism among individuals under probation,*
2 *parole, or postrelease supervision.*

3 *3451. (a) Notwithstanding any other law and except for*
4 *persons serving a prison term for any crime described in*
5 *subdivision (b), all persons released from prison on and after July*
6 *1, 2011, after serving a prison term for a felony shall, upon release*
7 *from prison and for a period not exceeding three years immediately*
8 *following release, be subject to community supervision provided*
9 *by a county agency designated by each county's board of*
10 *supervisors which is consistent with evidence-based practices,*
11 *including, but not limited to, supervision policies, procedures,*
12 *programs, and practices demonstrated by scientific research to*
13 *reduce recidivism among individuals under postrelease*
14 *supervision.*

15 *(b) This section shall not apply to any person released from*
16 *prison after having served a prison term for any of the following:*

17 *(1) A serious felony described in subdivision (c) of Section*
18 *1192.7.*

19 *(2) A violent felony described in subdivision (c) of Section 667.5.*

20 *(3) A crime for which the person was sentenced pursuant to*
21 *paragraph (2) of subdivision (e) of Section 667 or paragraph (2)*
22 *of subdivision (c) of Section 1170.12.*

23 *(4) Any crime where the person eligible for release from prison*
24 *is classified as a High Risk Sex Offender.*

25 *(c) (1) Postrelease supervision under this title shall be*
26 *implemented by a county agency according to a postrelease*
27 *strategy designated by each county's board of supervisors.*

28 *(2) The Department of Corrections and Rehabilitation shall*
29 *inform every prisoner subject to the provisions of this title, upon*
30 *release from state prison, of the requirements of this title and of*
31 *his or her responsibility to report to the county agency responsible*
32 *for serving that inmate. The department shall also inform persons*
33 *serving a term of parole for a felony offense who are subject to*
34 *this section of the requirements of this title and of his or her*
35 *responsibility to report to the county agency responsible for serving*
36 *that parolee. Thirty days prior to the release of any person subject*
37 *to postrelease supervision by a county, the department shall notify*
38 *the county of all information that would otherwise be required for*
39 *parolees under subdivision (e) of Section 3003.*

1 3452. (a) *Persons eligible for postrelease community*
2 *supervision pursuant to this title shall enter into a postrelease*
3 *community supervision agreement prior to, and as a condition of,*
4 *their release from prison. Persons on parole transferred to*
5 *postrelease community supervision shall enter into a postrelease*
6 *community supervision agreement as a condition of their release*
7 *from state prison.*

8 (b) *A postrelease community supervision agreement shall specify*
9 *the following:*

10 (1) *The person's release date and the maximum period the*
11 *person may be subject to postrelease supervision under this title.*

12 (2) *The name, address, and telephone number of the county*
13 *agency responsible for the person's postrelease supervision.*

14 (3) *An advisement that if a person breaks the law or violates*
15 *the conditions of release, he or she can be incarcerated in a county*
16 *jail regardless of whether or not new charges are filed.*

17 3453. *A postrelease community supervision agreement shall*
18 *include the following conditions:*

19 (a) *The person shall sign and agree to the conditions of release.*

20 (b) *The person shall obey all laws.*

21 (c) *The person shall report to the supervising county agency*
22 *within two working days of release from custody.*

23 (d) *The person shall follow the directives and instructions of*
24 *the supervising county agency.*

25 (e) *The person shall report to the supervising county agency as*
26 *directed by that agency.*

27 (f) *The person, and his or her residence and possessions, shall*
28 *be subject to search at any time of the day or night, with or without*
29 *a warrant, by an agent of the supervising county agency or by a*
30 *peace officer.*

31 (g) *The person shall waive extradition if found outside the state.*

32 (h) *The person shall inform the supervising county agency of*
33 *the person's place of residence, employment, education, or*
34 *training.*

35 (i) (1) *The person shall inform the supervising county agency*
36 *of any pending or anticipated changes in residence, employment,*
37 *education, or training.*

38 (2) *If the person enters into new employment, he or she shall*
39 *inform the supervising county agency of the new employment within*
40 *three business days of that entry.*

1 (j) *The person shall immediately inform the supervising county*
2 *agency if he or she is arrested or receives a citation.*

3 (k) *The person shall obtain the permission of the supervising*
4 *county agency to travel more than 50 miles from the person's place*
5 *of residence.*

6 (l) *The person shall obtain a travel pass from the supervising*
7 *county agency before he or she may leave the county or state for*
8 *more than two days.*

9 (m) *The person shall not be in the presence of a firearm or*
10 *ammunition, or any item that appears to be a firearm or*
11 *ammunition.*

12 (n) *The person shall not possess, use, or have access to any*
13 *weapon listed in Section 12020, 16140, subdivision (c) of Section*
14 *16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision*
15 *(b) of Section 16460, Section 16470, subdivision (f) of Section*
16 *16520, or Section 16570, 16740, 16760, 16830, 16920, 16930,*
17 *16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270,*
18 *17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720,*
19 *17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200,*
20 *20310, 20410, 20510, 20611, 20710, 20910, 21110, 21310, 21810,*
21 *22010, 22015, 22210, 22215, 22410, 32430, 24310, 24410, 24510,*
22 *24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405,*
23 *32410, 32415, 32420, 32425, 32435, 32440, 32445, 32450, 32900,*
24 *33215, 33220, 33225, or 33600.*

25 (o) *(1) Except as provided in paragraph (2) and subdivision*
26 *(p), the person shall not possess a knife with a blade longer than*
27 *two inches.*

28 *(2) The person may possess a kitchen knife with a blade longer*
29 *than two inches if the knife is used and kept only in the kitchen of*
30 *the person's residence.*

31 (p) *The person may use a knife with a blade longer than two*
32 *inches, if the use is required for that person's employment, the use*
33 *has been approved in a document issued by the supervising county*
34 *agency, and the person possesses the document of approval at all*
35 *times and makes it available for inspection.*

36 (q) *The person agrees to waive any right to a court hearing*
37 *prior to the imposition of a period of "flash incarceration" in a*
38 *county jail of not more than seven consecutive days, and not more*
39 *than 14 aggregate days, for any violation of his or her postrelease*
40 *supervision conditions.*

1 (r) *The person agrees to participate in rehabilitation*
2 *programming as recommended by the supervising county agency.*

3 3454. (a) *Each supervising county agency, as established by*
4 *the county board of supervisors pursuant to subdivision (a) of*
5 *Section 3451, shall establish a review process for assessing and*
6 *refining a person's program of postrelease supervision. Any*
7 *additional postrelease supervision conditions shall be reasonably*
8 *related to the underlying offense for which the offender spent time*
9 *in prison and the offender's criminal history, and be otherwise*
10 *consistent with law.*

11 (b) *Each county agency responsible for postrelease supervision,*
12 *as established by the county board of supervisors pursuant to*
13 *subdivision (a) of Section 3451, may determine additional*
14 *appropriate conditions of supervision consistent with those listed*
15 *in Section 3453, order the provision of appropriate rehabilitation*
16 *and treatment services, determine appropriate incentives, and*
17 *determine and order appropriate responses to alleged violations,*
18 *which can include, but shall not be limited to, immediate,*
19 *structured, and graduated sanctions up to and including*
20 *imprisonment in a county jail.*

21 3455. (a) *The court shall establish a process to determine*
22 *violations of conditions of postrelease supervision. Upon a finding*
23 *that the person has violated the conditions of supervision, the court*
24 *shall have authority to do all of the following:*

25 (1) *Impose additional conditions of supervision and sanctions*
26 *without ordering a custodial sanction.*

27 (2) *Modify the person's supervision with additional conditions*
28 *and sanctions.*

29 (3) *Revoke and terminate supervision where the person has*
30 *been convicted of a new misdemeanor or felony.*

31 (b) *Confinement pursuant to a violation of conditions of*
32 *postrelease supervision shall not exceed a period of 12 months in*
33 *the county jail.*

34 (c) *Periods of "flash incarceration," as defined in subdivision*
35 *(e), are encouraged as one method of punishment for violations*
36 *of an offender's conditions of postrelease supervision.*

37 (d) *In no case shall a person be under supervision or in custody*
38 *pursuant to this title on or after three years from the date of the*
39 *person's initial entry onto postrelease supervision.*

1 (e) “Flash incarceration” is a period of detention in county jail
2 due to a violation of an offender’s conditions of postrelease
3 supervision. The length of the detention period can range between
4 one and 14 consecutive days. Flash incarceration is a tool that
5 may be used by each county agency responsible for postrelease
6 supervision. Shorter, but if necessary more frequent, periods of
7 detention for violations of an offender’s postrelease supervision
8 conditions shall appropriately punish an offender while preventing
9 the disruption in a work or home establishment that typically arises
10 from longer term revocations.

11 3456. The county agency responsible for postrelease
12 supervision, as established by the county board of supervisors
13 pursuant to subdivision (a) of Section 3451, shall maintain
14 postrelease supervision over a person under postrelease
15 supervision pursuant to this title until one of the following events
16 occurs:

17 (a) The person has been subject to postrelease supervision
18 pursuant to this title for three years at which time the offender
19 shall be immediately discharged from postrelease supervision.

20 (b) Any person on postrelease supervision for six consecutive
21 months with no violations of his or her conditions of postrelease
22 supervision may be considered for immediate discharge upon
23 recommendation by the supervising county agency to the court,
24 and that discharge is granted.

25 (c) Jurisdiction over the person has been terminated by
26 operation of law.

27 (d) Jurisdiction is transferred to another supervising county
28 agency.

29 (e) Jurisdiction is terminated by the court upon a motion by the
30 supervising county agency.

31 3457. The Department of Corrections and Rehabilitation shall
32 have no jurisdiction over any person who is under postrelease
33 community supervision pursuant to this title.

34 3458. No person subject to this title shall be returned to prison
35 for a violation of any condition of the person’s postrelease
36 supervision agreement.

37 SEC. 480. Section 4011.7 of the Penal Code is amended to
38 read:

39 4011.7. Notwithstanding the provisions of Sections 4011 and
40 4011.5, when it appears that the prisoner in need of medical or

1 surgical treatment necessitating hospitalization or in need of
2 medical or hospital care was arrested for, charged with, or
3 convicted of an offense constituting a misdemeanor, the court in
4 proceedings under Section 4011 or the sheriff or jailer in action
5 taken under Section 4011.5 may direct that the guard be removed
6 from the prisoner while he *or she* is in the hospital. If ~~such that~~
7 direction is given, any ~~such~~ prisoner who knowingly escapes or
8 attempts to escape from ~~such that~~ hospital shall upon conviction
9 thereof be guilty of a misdemeanor and punishable by
10 imprisonment for not to exceed one year in the county jail if ~~such~~
11 *the* escape or attempt to escape was not by force or violence.
12 However, if ~~such the~~ escape is by force or violence ~~such the~~
13 prisoner shall be guilty of a felony and punishable by imprisonment
14 ~~in the state prison pursuant to subdivision (h) of Section 1170, or~~
15 in the county jail for not exceeding one year; provided, that when
16 ~~such that~~ second term of imprisonment is to be served in the county
17 jail it shall commence from the time ~~such that~~ prisoner would
18 otherwise be discharged from ~~such that~~ jail.

19 *SEC. 481. Section 4016.5 of the Penal Code is amended to*
20 *read:*

21 4016.5. A city or county shall be reimbursed by the Department
22 of Corrections and Rehabilitation for costs incurred resulting from
23 the detention of a state prisoner; *or* a person sentenced or referred
24 to the state prison, ~~or a parolee and from parole revocation~~
25 ~~proceedings~~ when the detention meets any of the following
26 conditions:

27 ~~(a) The detention relates to a violation of the conditions of parole~~
28 ~~or the rules and regulations of the Secretary of the Department of~~
29 ~~Corrections and Rehabilitation and does not relate to a new criminal~~
30 ~~charge.~~

31 ~~(b) The detention is pursuant to (1) an order of the Board of~~
32 ~~Parole Hearings under the authority granted by Section 3060, or~~
33 ~~(2) an order of the Governor under the authority granted by Section~~
34 ~~3062 or (3) an exercise of a state parole or correctional officer's~~
35 ~~peace officer powers as specified in Section 830.5.~~

36 ~~(c) Security services and facilities are provided for hearings~~
37 ~~which are conducted by the Board of Parole Hearings to revoke~~
38 ~~parole.~~

39 ~~(d)~~

(a) (1) The detention results from a new commitment, or a referral pursuant to Section 1203.03, once the abstract of judgment has been completed, the department's intake control unit has been notified by the county that the prisoner is ready to be transported pursuant to Section 1216, and the department is unable to accept delivery of the prisoner. The reimbursement shall be provided for each day starting on the day following the fifth working day after the date of notification by the county, if the prisoner remains ready to be delivered and the department is unable to receive the prisoner. If a county delivers or attempts to deliver a person to the department without the prior notification required by this paragraph, the date of the delivery or attempted delivery shall be recognized as the notification date pursuant to this paragraph. The notification and verification required by the county for prisoners ready to be transported, and reimbursement provided to the county for prisoners that the department is unable to receive, shall be made pursuant to procedures established by the department.

A

(2) A city or county shall be reimbursed by the department from funds appropriated in Item 5240-101-0001 of the Budget Act of 1998 for costs incurred pursuant to subdivisions (a), (b), and (c) and from funds appropriated in Item 5240-001-0001 of that act *the annual Budget Act* for costs incurred pursuant to *this* subdivision-(d).

The

(3) The reimbursement required by this section shall be expended for maintenance, upkeep, and improvement of jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of reimbursement authorized by this section. The net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of the net reimbursement to a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 only if the county is failing to make reasonable efforts to correct differences, with consideration given to the resources available for those purposes.

Costs

(4) “Costs incurred resulting from the detention,” as used in this section, shall include the same cost factors as are utilized by the Department of Corrections and Rehabilitation in determining the cost of prisoner care in state correctional facilities.

(e)

(b) No city, county, or other jurisdiction may file, and the state may not reimburse, a claim pursuant to this section that is presented to the Department of Corrections and Rehabilitation or to any other agency or department of the state more than six months after the close of the month in which the costs were incurred.

(c) *The changes to this section made by the act that added this subdivision shall be effective on July 1, 2011.*

SEC. 482. Section 4019 of the Penal Code is amended to read:

4019. (a) The provisions of this section shall apply in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp, or any city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date on which the serving of the sentence commences, under a judgment of imprisonment, or a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence, in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(b) Subject to the provisions of subdivision (d), for each ~~six-day~~ *four-day* period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor

1 as assigned by the sheriff, chief of police, or superintendent of an
2 industrial farm or road camp.

3 (c) For each ~~six-day~~ *four-day* period in which a prisoner is
4 confined in or committed to a facility as specified in this section,
5 one day shall be deducted from his or her period of confinement
6 unless it appears by the record that the prisoner has not
7 satisfactorily complied with the reasonable rules and regulations
8 established by the sheriff, chief of police, or superintendent of an
9 industrial farm or road camp.

10 (d) Nothing in this section shall be construed to require the
11 sheriff, chief of police, or superintendent of an industrial farm or
12 road camp to assign labor to a prisoner if it appears from the record
13 that the prisoner has refused to satisfactorily perform labor as
14 assigned or that the prisoner has not satisfactorily complied with
15 the reasonable rules and regulations of the sheriff, chief of police,
16 or superintendent of any industrial farm or road camp.

17 (e) No deduction may be made under this section unless the
18 person is committed for a period of ~~six~~ *four* days or longer.

19 (f) It is the intent of the Legislature that if all days are earned
20 under this section, a term of ~~six~~ *four* days will be deemed to have
21 been served for every ~~four~~ *two* days spent in actual custody.

22 (g) The changes in this section as enacted by the act that added
23 this subdivision shall apply to prisoners who are confined to a
24 county jail, city jail, industrial farm, or road camp for a crime
25 committed on or after the effective date of that act.

26 (h) *The changes to this section enacted by the act that added*
27 *this subdivision shall apply prospectively and shall apply to*
28 *prisoners who are confined to a county jail, city jail, industrial*
29 *farm, or road camp for a crime committed on or after July 1, 2011.*
30 *Any days earned by a prisoner prior to July 1, 2011, shall be*
31 *calculated at the rate required by the prior law.*

32 SEC. 483. Section 4131.5 of the Penal Code is amended to
33 read:

34 4131.5. Every person confined in, sentenced to, or serving a
35 sentence in, a city or county jail, industrial farm, or industrial road
36 camp in this state, who commits a battery upon the person of any
37 individual who is not himself *or herself* a person confined or
38 sentenced therein, is guilty of a public offense and is punishable
39 by imprisonment in a state prison pursuant to subdivision (h) of
40 Section 1170, or in a county jail for not more than one year.

1 *SEC. 484. Section 4501.1 of the Penal Code is amended to*
2 *read:*

3 4501.1. (a) Every person confined in the state prison who
4 commits a battery by gassing upon the person of any peace officer,
5 as defined in Chapter 4.5 (commencing with Section 830) of Title
6 3 of Part 2, or employee of the state prison is guilty of aggravated
7 battery and shall be punished by imprisonment in a county jail or
8 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
9 *Section 1170* for two, three, or four years. Every state prison inmate
10 convicted of a felony under this section shall serve his or her term
11 of imprisonment as prescribed in Section 4501.5.

12 (b) For purposes of this section, “gassing” means intentionally
13 placing or throwing, or causing to be placed or thrown, upon the
14 person of another, any human excrement or other bodily fluids or
15 bodily substances or any mixture containing human excrement or
16 other bodily fluids or bodily substances that results in actual contact
17 with the person’s skin or membranes.

18 (c) The warden or other person in charge of the state prison
19 shall use every available means to immediately investigate all
20 reported or suspected violations of subdivision (a), including, but
21 not limited to, the use of forensically acceptable means of
22 preserving and testing the suspected gassing substance to confirm
23 the presence of human excrement or other bodily fluids or bodily
24 substances. If there is probable cause to believe that the inmate
25 has violated subdivision (a), the chief medical officer of the state
26 prison or his or her designee, may, when he or she deems it
27 medically necessary to protect the health of an officer or employee
28 who may have been subject to a violation of this section, order the
29 inmate to receive an examination or test for hepatitis or tuberculosis
30 or both hepatitis and tuberculosis on either a voluntary or
31 involuntary basis immediately after the event, and periodically
32 thereafter as determined to be necessary by the medical officer in
33 order to ensure that further hepatitis or tuberculosis transmission
34 does not occur. These decisions shall be consistent with an
35 occupational exposure as defined by the Center for Disease Control
36 and Prevention. The results of any examination or test shall be
37 provided to the officer or employee who has been subject to a
38 reported or suspected violation of this section. Nothing in this
39 subdivision shall be construed to otherwise supersede the operation
40 of Title 8 (commencing with Section 7500). Any person performing

1 tests, transmitting test results, or disclosing information pursuant
2 to this section shall be immune from civil liability for any action
3 taken in accordance with this section.

4 (d) The warden or other person in charge of the state prison
5 shall refer all reports for which there is probable cause to believe
6 that the inmate has violated subdivision (a) to the local district
7 attorney for prosecution.

8 (e) The Department of Corrections *and Rehabilitation* shall
9 report to the Legislature, by January 1, 2000, its findings and
10 recommendations on gassing incidents at the state prison and the
11 medical testing authorized by this section. The report shall include,
12 but not be limited to, all of the following:

13 (1) The total number of gassing incidents at each state prison
14 facility up to the date of the report.

15 (2) The disposition of each gassing incident, including the
16 administrative penalties imposed, the number of incidents that are
17 prosecuted, and the results of those prosecutions, including any
18 penalties imposed.

19 (3) A profile of the inmates who commit the aggravated
20 batteries, including the number of inmates who have one or more
21 prior serious or violent felony convictions.

22 (4) Efforts that the department has taken to limit these incidents,
23 including staff training and the use of protective clothing and
24 goggles.

25 (5) The results and costs of the medical testing authorized by
26 this section.

27 (f) Nothing in this section shall preclude prosecution under both
28 this section and any other provision of law.

29 *SEC. 485. Section 4502 of the Penal Code is amended to read:*

30 4502. (a) Every person who, while at or confined in any penal
31 institution, while being conveyed to or from any penal institution,
32 or while under the custody of officials, officers, or employees of
33 any penal institution, possesses or carries upon his or her person
34 or has under his or her custody or control any instrument or weapon
35 of the kind commonly known as a blackjack, slungshot, billy,
36 sandclub, sandbag, or metal knuckles, any explosive substance,
37 or fixed ammunition, any dirk or dagger or sharp instrument, any
38 pistol, revolver, or other firearm, or any tear gas or tear gas weapon,
39 is guilty of a felony and shall be punished by imprisonment in the

1 ~~state prison pursuant to subdivision (h) of Section 1170~~ for two,
2 three, or four years, to be served consecutively.

3 (b) Every person who, while at or confined in any penal
4 institution, while being conveyed to or from any penal institution,
5 or while under the custody of officials, officers, or employees of
6 any penal institution, manufactures or attempts to manufacture
7 any instrument or weapon of the kind commonly known as a
8 blackjack, slungshot, billy, sandclub, sandbag, or metal knuckles,
9 any explosive substance, or fixed ammunition, any dirk or dagger
10 or sharp instrument, any pistol, revolver, or other firearm, or any
11 tear gas or tear gas weapon, is guilty of a felony and shall be
12 punished by imprisonment ~~in the state prison pursuant to~~
13 ~~subdivision (h) of Section 1170~~ for 16 months, or two or three
14 years, to be served consecutively.

15 (c) For purposes of this section, “penal institution” means the
16 state prison, a prison road camp, prison forestry camp, or other
17 prison camp or farm, or a county jail or county road camp.

18 SEC. 486. Section 4530 of the Penal Code is amended to read:

19 4530. (a) Every prisoner confined in a state prison who, by
20 force or violence, escapes or attempts to escape therefrom and
21 every prisoner committed to a state prison who, by force or
22 violence, escapes or attempts to escape while being conveyed to
23 or from ~~such~~ that prison or any other state prison, or any prison
24 road camp, prison forestry camp, or other prison camp or prison
25 farm or any other place while under the custody of prison officials,
26 officers or employees; or who, by force or violence, escapes or
27 attempts to escape from any prison road camp, prison forestry
28 camp, or other prison camp or prison farm or other place while
29 under the custody of prison officials, officers or employees; or
30 who, by force or violence, escapes or attempts to escape while at
31 work outside or away from prison under custody of prison officials,
32 officers, or employees, is punishable by imprisonment ~~in a state~~
33 ~~prison pursuant to subdivision (h) of Section 1170~~ for a term of
34 two, four, or six years. The second term of imprisonment of a
35 person convicted under this subdivision shall commence from the
36 time he or she would otherwise have been discharged from prison.
37 No additional probation report shall be required with respect to
38 ~~such~~ that offense.

39 (b) Every prisoner who commits an escape or attempts an escape
40 as described in subdivision (a), without force or violence, is

1 punishable by imprisonment ~~in the state prison~~ pursuant to
2 subdivision (h) of Section 1170 for 16 months, or two or three
3 years to be served consecutively. No additional probation report
4 shall be required with respect to such offense.

5 (c) The willful failure of a prisoner who is employed or
6 continuing his education, or who is authorized to secure
7 employment or education, or who is temporarily released pursuant
8 to Section 2690, 2910, or 6254, or Section 3306 of the Welfare
9 and Institutions Code, to return to the place of confinement not
10 later than the expiration of a period during which he or she is
11 authorized to be away from the place of confinement, is an escape
12 from the place of confinement punishable as provided in this
13 section. A conviction of a violation of this subdivision, not
14 involving force or violence, shall not be charged as a prior felony
15 conviction in any subsequent prosecution for a public offense.

16 SEC. 487. Section 4532 of the Penal Code is amended to read:

17 4532. (a) (1) Every prisoner arrested and booked for, charged
18 with, or convicted of a misdemeanor, and every person committed
19 under the terms of Section 5654, 5656, or 5677 of the Welfare and
20 Institutions Code as an inebriate, who is confined in any county
21 or city jail, prison, industrial farm, or industrial road camp, is
22 engaged on any county road or other county work, is in the lawful
23 custody of any officer or person, is employed or continuing in his
24 or her regular educational program or authorized to secure
25 employment or education away from the place of confinement,
26 pursuant to the Cobey Work Furlough Law (Section 1208), is
27 authorized for temporary release for family emergencies or for
28 purposes preparatory to his or her return to the community pursuant
29 to Section 4018.6, or is a participant in a home detention program
30 pursuant to Section 1203.016, 1203.017, or 1203.018, and who
31 thereafter escapes or attempts to escape from the county or city
32 jail, prison, industrial farm, or industrial road camp or from the
33 custody of the officer or person in charge of him or her while
34 engaged in or going to or returning from the county work or from
35 the custody of any officer or person in whose lawful custody he
36 or she is, or from the place of confinement in a home detention
37 program pursuant to Section 1203.016, 1203.017, or 1203.018 is
38 guilty of a felony and, if the escape or attempt to escape was not
39 by force or violence, is punishable by imprisonment in the state

1 prison for a determinate term of one year and one day, or in a
2 county jail not exceeding one year.

3 (2) If the escape or attempt to escape described in paragraph
4 (1) is committed by force or violence, the person is guilty of a
5 felony, punishable by imprisonment in the state prison for two,
6 four, or six years to be served consecutively, or in a county jail
7 not exceeding one year. When the second term of imprisonment
8 is to be served in a county jail, it shall commence from the time
9 the prisoner otherwise would have been discharged from jail.

10 (3) A conviction of a violation of this subdivision, or a violation
11 of subdivision (b) involving a participant of a home detention
12 program pursuant to Section 1203.016, *1203.017, or 1203.018* that
13 is not committed by force or violence, shall not be charged as a
14 prior felony conviction in any subsequent prosecution for a public
15 offense.

16 (b) (1) Every prisoner arrested and booked for, charged with,
17 or convicted of a felony, and every person committed by order of
18 the juvenile court, who is confined in any county or city jail, prison,
19 industrial farm, or industrial road camp, is engaged on any county
20 road or other county work, is in the lawful custody of any officer
21 or person, or is confined pursuant to Section 4011.9, is a participant
22 in a home detention program pursuant to Section 1203.016,
23 *1203.017, or 1203.018* who escapes or attempts to escape from a
24 county or city jail, prison, industrial farm, or industrial road camp
25 or from the custody of the officer or person in charge of him or
26 her while engaged in or going to or returning from the county work
27 or from the custody of any officer or person in whose lawful
28 custody he or she is, or from confinement pursuant to Section
29 4011.9, or from the place of confinement in a home detention
30 program pursuant to Section 1203.016, is guilty of a felony and,
31 if the escape or attempt to escape was not by force or violence, is
32 punishable by imprisonment in the state prison for 16 months, two
33 years, or three years, to be served consecutively, or in a county
34 jail not exceeding one year.

35 (2) If the escape or attempt to escape described in paragraph
36 (1) is committed by force or violence, the person is guilty of a
37 felony, punishable by imprisonment in the state prison for a full
38 term of two, four, or six years to be served consecutively to any
39 other term of imprisonment, commencing from the time the person
40 otherwise would have been released from imprisonment and the

1 term shall not be subject to reduction pursuant to subdivision (a)
2 of Section 1170.1, or in a county jail for a consecutive term not to
3 exceed one year, that term to commence from the time the prisoner
4 otherwise would have been discharged from jail.

5 (c) Notwithstanding any other law, every inmate who is a
6 participant in an alternative custody program pursuant to Section
7 1170.05 who escapes or attempts to escape from the program is
8 guilty of a misdemeanor.

9 (d) (1) Except in unusual cases where the interests of justice
10 would best be served if the person is granted probation, probation
11 shall not be granted to any person who is convicted of a felony
12 offense under this section in that he or she escaped or attempted
13 to escape from a secure main jail facility, from a court building,
14 or while being transported between the court building and the jail
15 facility.

16 (2) In any case in which a person is convicted of a violation of
17 this section designated as a misdemeanor, he or she shall be
18 confined in a county jail for not less than 90 days nor more than
19 one year except in unusual cases where the interests of justice
20 would best be served by the granting of probation.

21 (3) For the purposes of this subdivision, “main jail facility”
22 means the facility used for the detention of persons pending
23 arraignment, after arraignment, during trial, and upon sentence or
24 commitment. The facility shall not include an industrial farm,
25 industrial road camp, work furlough facility, or any other nonsecure
26 facility used primarily for sentenced prisoners. As used in this
27 subdivision, “secure” means that the facility contains an outer
28 perimeter characterized by the use of physically restricting
29 construction, hardware, and procedures designed to eliminate
30 ingress and egress from the facility except through a closely
31 supervised gate or doorway.

32 (4) If the court grants probation under this subdivision, it shall
33 specify the reason or reasons for that order on the court record.

34 (5) Any sentence imposed under this subdivision shall be served
35 consecutive to any other sentence in effect or pending.

36 (e) The willful failure of a prisoner, whether convicted of a
37 felony or a misdemeanor, to return to his or her place of
38 confinement no later than the expiration of the period that he or
39 she was authorized to be away from that place of confinement, is
40 an escape from that place of confinement. This subdivision applies

1 to a prisoner who is employed or continuing in his or her regular
2 educational program, authorized to secure employment or education
3 pursuant to the Cobey Work Furlough Law (Section 1208),
4 authorized for temporary release for family emergencies or for
5 purposes preparatory to his or her return to the community pursuant
6 to Section 4018.6, or permitted to participate in a home detention
7 program pursuant to Section 1203.016, 1203.017, or 1203.018. A
8 prisoner convicted of a misdemeanor who willfully fails to return
9 to his or her place of confinement under this subdivision shall be
10 punished as provided in paragraph (1) of subdivision (a). A prisoner
11 convicted of a felony who willfully fails to return to his or her
12 place of confinement shall be punished as provided in paragraph
13 (1) of subdivision (b).

14 *SEC. 488. Section 4533 of the Penal Code is amended to read:*

15 4533. Every keeper of a prison, sheriff, deputy sheriff, or jailer,
16 or person employed as a guard, who fraudulently contrives,
17 procures, aids, connives at, or voluntarily permits the escape of
18 any prisoner in custody, is punishable by imprisonment ~~in the state~~
19 ~~prison pursuant to subdivision (h) of Section 1170~~, and fine not
20 exceeding ten thousand dollars (\$10,000).

21 *SEC. 489. Section 4536 of the Penal Code is amended to read:*

22 4536. (a) Every person committed to a state hospital or other
23 public or private mental health facility as a mentally disordered
24 sex offender, who escapes from or who escapes while being
25 conveyed to or from such state hospital or other public or private
26 mental health facility, is punishable by imprisonment ~~in the state~~
27 ~~prison pursuant to subdivision (h) of Section 1170~~ or in the county
28 jail not to exceed one year. The term imposed pursuant to this
29 section shall be served consecutively to any other sentence or
30 commitment.

31 (b) The medical director or person in charge of a state hospital
32 or other public or private mental health facility to which a person
33 has been committed as a mentally disordered sex offender shall
34 promptly notify the chief of police of the city in which the hospital
35 or facility is located, or the sheriff of the county if the hospital or
36 facility is located in an unincorporated area, of the escape of the
37 person, and shall request the assistance of the chief of police or
38 sheriff in apprehending the person, and shall, within 48 hours of
39 the escape of the person, orally notify the court that made the

1 commitment, the prosecutor in the case, and the Department of
2 Justice of the escape.

3 *SEC. 490. Section 4550 of the Penal Code is amended to read:*

4 4550. Every person who rescues or attempts to rescue, or aids
5 another person in rescuing or attempting to rescue any prisoner
6 from any prison, or prison road camp or any jail or county road
7 camp, or from any officer or person having him *or her* in lawful
8 custody, is punishable as follows:

9 ~~1.~~

10 (a) If ~~such~~ *the* prisoner was in custody upon a conviction of a
11 felony punishable with death~~;~~, by imprisonment ~~in the state prison~~
12 *pursuant to subdivision (h) of Section 1170* for two, three or four
13 years~~;~~.

14 ~~2.~~

15 (b) If ~~such~~ *the* prisoner was in custody otherwise than as
16 specified in ~~subsection 1 hereof:~~ *subdivision (a)*, by imprisonment
17 ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or
18 by imprisonment in the county jail not to exceed one year.

19 *SEC. 491. Section 4573 of the Penal Code is amended to read:*

20 4573. (a) Except when otherwise authorized by law, or when
21 authorized by the person in charge of the prison or other institution
22 referred to in this section or by an officer of the institution
23 empowered by the person in charge of the institution to give the
24 authorization, any person, who knowingly brings or sends into, or
25 knowingly assists in bringing into, or sending into, any state prison,
26 prison road camp, prison forestry camp, or other prison camp or
27 prison farm or any other place where prisoners of the state are
28 located under the custody of prison officials, officers or employees,
29 or into any county, city and county, or city jail, road camp, farm
30 or other place where prisoners or inmates are located under custody
31 of any sheriff, chief of police, peace officer, probation officer or
32 employees, or within the grounds belonging to the institution, any
33 controlled substance, the possession of which is prohibited by
34 Division 10 (commencing with Section 11000) of the Health and
35 Safety Code, any device, contrivance, instrument, or paraphernalia
36 intended to be used for unlawfully injecting or consuming a
37 controlled substance, is guilty of a felony punishable by
38 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
39 *Section 1170* for two, three, or four years.

40 ~~The~~

1 (b) The prohibitions and sanctions addressed in this section shall
2 be clearly and prominently posted outside of, and at the entrance
3 to, the grounds of all detention facilities under the jurisdiction of,
4 or operated by, the state or any city, county, or city and county.

5 SEC. 492. Section 4573.6 of the Penal Code is amended to
6 read:

7 4573.6. (a) Any person who knowingly has in his or her
8 possession in any state prison, prison road camp, prison forestry
9 camp, or other prison camp or prison farm or any place where
10 prisoners of the state are located under the custody of prison
11 officials, officers, or employees, or in any county, city and county,
12 or city jail, road camp, farm, or any place or institution, where
13 prisoners or inmates are being held under the custody of any sheriff,
14 chief of police, peace officer, probation officer, or employees, or
15 within the grounds belonging to any jail, road camp, farm, place
16 or institution, any controlled substances, the possession of which
17 is prohibited by Division 10 (commencing with Section 11000) of
18 the Health and Safety Code, any device, contrivance, instrument,
19 or paraphernalia intended to be used for unlawfully injecting or
20 consuming controlled substances, without being authorized to so
21 possess the same by the rules of the Department of Corrections,
22 rules of the prison or jail, institution, camp, farm or place, or by
23 the specific authorization of the warden, superintendent, jailer, or
24 other person in charge of the prison, jail, institution, camp, farm
25 or place, is guilty of a felony punishable by imprisonment in the
26 state prison pursuant to subdivision (h) of Section 1170 for two,
27 three, or four years.

28 The

29 (b) The prohibitions and sanctions addressed in this section shall
30 be clearly and prominently posted outside of, and at the entrance
31 to, the grounds of all detention facilities under the jurisdiction of,
32 or operated by, the state or any city, county, or city and county.

33 SEC. 493. Section 4573.9 of the Penal Code is amended to
34 read:

35 4573.9. (a) Notwithstanding any other provision of law, any
36 person, other than a person held in custody, who sells, furnishes,
37 administers, or gives away, or offers to sell, furnish, administer,
38 or give away to any person held in custody in any state prison or
39 other institution under the jurisdiction of the Department of
40 Corrections, or in any prison camp, prison farm, or any other place

1 where prisoners or inmates of these institutions are located under
 2 the custody of prison institution officials, officers, or employees,
 3 or in any county, city and county, or city jail, road camp, farm, or
 4 any other institution or place where prisoners or inmates are being
 5 held under the custody of any sheriff, chief of police, peace officer,
 6 probation officer, or employees, or within the grounds belonging
 7 to any institution or place, any controlled substance, the possession
 8 of which is prohibited by Division 10 (commencing with Section
 9 11000) of the Health and Safety Code, if the recipient is not
 10 authorized to possess the same by the rules of the Department of
 11 Corrections, rules of the prison or jail, institution, camp, farm, or
 12 place, or by the specific authorization of the warden,
 13 superintendent, jailer, or other person in charge of the prison, jail,
 14 institution, camp, farm, or place, is guilty of a felony punishable
 15 by imprisonment in the state prison pursuant to subdivision (h) of
 16 Section 1170 for two, four, or six years.

17 ~~The~~
 18 (b) The prohibitions and sanctions addressed in this section shall
 19 be clearly and prominently posted outside of, and at the entrance
 20 to, the grounds of all detention facilities under the jurisdiction of,
 21 or ~~operated~~ operated by, the state or any city, county, or city and
 22 county.

23 SEC. 494. Section 4574 of the Penal Code is amended to read:

24 4574. (a) Except when otherwise authorized by law, or when
 25 authorized by the person in charge of the prison or other institution
 26 referred to in this section or by an officer of the institution
 27 empowered by the person in charge of the institution to give such
 28 authorization, any person, who knowingly brings or sends into, or
 29 knowingly assists in bringing into, or sending into, any state prison
 30 or prison road camp or prison forestry camp, or other prison camp
 31 or prison farm or any other place where prisoners of the state prison
 32 are located under the custody of prison officials, officers or
 33 employees, or any jail or any county road camp in this state, or
 34 within the grounds belonging or adjacent to any such institution,
 35 any firearms, deadly weapons, or explosives, and any person who,
 36 while lawfully confined in a jail or county road camp possesses
 37 therein any firearm, deadly weapon, explosive, tear gas or tear gas
 38 weapon, is guilty of a felony and punishable by imprisonment in
 39 the state prison pursuant to subdivision (h) of Section 1170 for
 40 two, three, or four years.

1 (b) Except as provided in subdivision (a), any person who
2 knowingly brings or sends into ~~such~~ *those* places any tear gas or
3 tear gas weapons which results in the release of such tear gas or
4 use of such weapon is guilty of a felony and punishable by
5 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
6 *Section 1170* for two, three, or four years.

7 (c) Except as provided in subdivision (a), any person who
8 knowingly brings or sends into ~~such~~ *those* places any tear gas or
9 tear gas weapons is guilty of a misdemeanor and punishable by
10 imprisonment in the county jail not exceeding six months, or by
11 fine not exceeding one thousand dollars (\$1,000), or by both such
12 fine and imprisonment.

13 *SEC. 495. Section 4600 of the Penal Code is amended to read:*

14 4600. (a) Every person who willfully and intentionally breaks
15 down, pulls down, or otherwise destroys or injures any jail, prison,
16 or any public property in any jail or prison, is punishable by a fine
17 not exceeding ten thousand dollars (\$10,000), and by imprisonment
18 ~~in the state prison pursuant to subdivision (h) of Section 1170,~~
19 except that where the damage or injury to any city, city and county,
20 or county jail property or prison property is determined to be nine
21 hundred fifty dollars (\$950) or less, that person is guilty of a
22 misdemeanor.

23 (b) In any case in which a person is convicted of violating this
24 section, the court may order the defendant to make restitution to
25 the public entity that owns the property damaged by the defendant.
26 The court shall specify in the order that the public entity that owns
27 the property damaged by the defendant shall not enforce the order
28 until the defendant satisfies all outstanding fines, penalties,
29 assessments, restitution fines, and restitution orders.

30 *SEC. 496. Section 11411 of the Penal Code is amended to*
31 *read:*

32 11411. (a) Any person who hangs a noose, knowing it to be
33 a symbol representing a threat to life, on the private property of
34 another, without authorization, for the purpose of terrorizing the
35 owner or occupant of that private property or in reckless disregard
36 of the risk of terrorizing the owner or occupant of that private
37 property, or who hangs a noose, knowing it to be a symbol
38 representing a threat to life, on the property of a primary school,
39 junior high school, high school, college campus, public park, or
40 place of employment, for the purpose of terrorizing any person

1 who attends or works at the school, park, or place of employment,
2 or who is otherwise associated with the school, park, or place of
3 employment, shall be punished by imprisonment in a county jail
4 not to exceed one year, or by a fine not to exceed five thousand
5 dollars (\$5,000), or by both the fine and imprisonment for the first
6 conviction or by imprisonment in a county jail not to exceed one
7 year, or by a fine not to exceed fifteen thousand dollars (\$15,000),
8 or by both the fine and imprisonment for any subsequent
9 conviction.

10 (b) Any person who places or displays a sign, mark, symbol,
11 emblem, or other physical impression, including, but not limited
12 to, a Nazi swastika, on the private property of another, without
13 authorization, for the purpose of terrorizing the owner or occupant
14 of that private property or in reckless disregard of the risk of
15 terrorizing the owner or occupant of that private property shall be
16 punished by imprisonment in a county jail not to exceed one year,
17 by a fine not to exceed five thousand dollars (\$5,000), or by both
18 the fine and imprisonment for the first conviction and by
19 imprisonment in a county jail not to exceed one year, by a fine not
20 to exceed fifteen thousand dollars (\$15,000), or by both the fine
21 and imprisonment for any subsequent conviction.

22 (c) Any person who engages in a pattern of conduct for the
23 purpose of terrorizing the owner or occupant of private property
24 or in reckless disregard of terrorizing the owner or occupant of
25 that private property, by placing or displaying a sign, mark, symbol,
26 emblem, or other physical impression, including, but not limited
27 to, a Nazi swastika, on the private property of another on two or
28 more occasions, shall be punished by imprisonment ~~in the state~~
29 ~~prison pursuant to subdivision (h) of Section 1170~~ for 16 months
30 or 2 or 3 years, by a fine not to exceed ten thousand dollars
31 (\$10,000), or by both the fine and imprisonment, or by
32 imprisonment in a county jail not to exceed one year, by a fine not
33 to exceed five thousand dollars (\$5,000), or by both the fine and
34 imprisonment. A violation of this subdivision shall not constitute
35 felonious conduct for purposes of Section 186.22.

36 (d) Any person who burns or desecrates a cross or other religious
37 symbol, knowing it to be a religious symbol, on the private property
38 of another without authorization for the purpose of terrorizing the
39 owner or occupant of that private property or in reckless disregard
40 of the risk of terrorizing the owner or occupant of that private

1 property, or who burns, desecrates, or destroys a cross or other
2 religious symbol, knowing it to be a religious symbol, on the
3 property of a primary school, junior high school, or high school
4 for the purpose of terrorizing any person who attends or works at
5 the school or who is otherwise associated with the school, shall
6 be punished by imprisonment ~~in the state prison pursuant to~~
7 *subdivision (h) of Section 1170* for 16 months or 2 or 3 years, by
8 a fine of not more than ten thousand dollars (\$10,000), or by both
9 the fine and imprisonment, or by imprisonment in a county jail
10 not to exceed one year, by a fine not to exceed five thousand dollars
11 (\$5,000), or by both the fine and imprisonment for the first
12 conviction and by imprisonment ~~in the state prison pursuant to~~
13 *subdivision (h) of Section 1170* for 16 months or 2 or 3 years, by
14 a fine of not more than ten thousand dollars (\$10,000), or by both
15 the fine and imprisonment, or by imprisonment in a county jail
16 not to exceed one year, by a fine not to exceed fifteen thousand
17 dollars (\$15,000), or by both the fine and imprisonment for any
18 subsequent conviction.

19 (e) As used in this section, “terrorize” means to cause a person
20 of ordinary emotions and sensibilities to fear for personal safety.

21 (f) The provisions of this section are severable. If any provision
22 of this section or its application is held invalid, that invalidity shall
23 not affect other provisions or applications that can be given effect
24 without the invalid provision or application.

25 *SEC. 497. Section 11413 of the Penal Code, as amended by*
26 *Section 25 of Chapter 700 of the Statutes of 2004, is amended to*
27 *read:*

28 11413. (a) Any person who explodes, ignites, or attempts to
29 explode or ignite any destructive device or any explosive, or who
30 commits arson, in or about any of the places listed in subdivision
31 (b), for the purpose of terrorizing another or in reckless disregard
32 of terrorizing another is guilty of a felony, and shall be punished
33 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
34 *Section 1170* for three, five, or seven years, and a fine not
35 exceeding ten thousand dollars (\$10,000).

36 (b) Subdivision (a) applies to the following places:

37 (1) Any health facility licensed under Chapter 2 (commencing
38 with Section 1250) of Division 2 of the Health and Safety Code,
39 or any place where medical care is provided by a licensed health
40 care professional.

1 (2) Any church, temple, synagogue, mosque, or other place of
2 worship.

3 (3) The buildings, offices, and meeting sites of organizations
4 that counsel for or against abortion or among whose major activities
5 are lobbying, publicizing, or organizing with respect to public or
6 private issues relating to abortion.

7 (4) Any place at which a lecture, film-showing, or other private
8 meeting or presentation that educates or propagates with respect
9 to abortion practices or policies, whether on private property or at
10 a meeting site authorized for specific use by a private group on
11 public property, is taking place.

12 (5) Any bookstore or public or private library.

13 (6) Any building or facility designated as a courthouse.

14 (7) The home or office of a judicial officer.

15 (8) Any building or facility regularly occupied by county
16 probation department personnel in which the employees perform
17 official duties of the probation department.

18 (9) Any private property, if the property was targeted in whole
19 or in part because of any of the actual or perceived characteristics
20 of the owner or occupant of the property listed in subdivision (a)
21 of Section 422.55.

22 (10) Any public or private school providing instruction in
23 kindergarten or grades 1 to 12, inclusive.

24 (c) As used in this section, “judicial officer” means a magistrate,
25 judge, justice, commissioner, referee, or any person appointed by
26 a court to serve in one of these capacities, of any state or federal
27 court located in this state.

28 (d) As used in this section, “terrorizing” means to cause a person
29 of ordinary emotions and sensibilities to fear for personal safety.

30 (e) Nothing in this section shall be construed to prohibit the
31 prosecution of any person pursuant to Section 12303.3 or any other
32 provision of law in lieu of prosecution pursuant to this section.

33 *SEC. 498. Section 11413 of the Penal Code, as amended by*
34 *Section 91 of Chapter 178 of the Statutes of 2010, is amended to*
35 *read:*

36 11413. (a) Any person who explodes, ignites, or attempts to
37 explode or ignite any destructive device or any explosive, or who
38 commits arson, in or about any of the places listed in subdivision
39 (b), for the purpose of terrorizing another or in reckless disregard
40 of terrorizing another is guilty of a felony, and shall be punished

1 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
2 Section 1170 for three, five, or seven years, and a fine not
3 exceeding ten thousand dollars (\$10,000).

4 (b) Subdivision (a) applies to the following places:

5 (1) Any health facility licensed under Chapter 2 (commencing
6 with Section 1250) of Division 2 of the Health and Safety Code,
7 or any place where medical care is provided by a licensed health
8 care professional.

9 (2) Any church, temple, synagogue, mosque, or other place of
10 worship.

11 (3) The buildings, offices, and meeting sites of organizations
12 that counsel for or against abortion or among whose major activities
13 are lobbying, publicizing, or organizing with respect to public or
14 private issues relating to abortion.

15 (4) Any place at which a lecture, film-showing, or other private
16 meeting or presentation that educates or propagates with respect
17 to abortion practices or policies, whether on private property or at
18 a meeting site authorized for specific use by a private group on
19 public property, is taking place.

20 (5) Any bookstore or public or private library.

21 (6) Any building or facility designated as a courthouse.

22 (7) The home or office of a judicial officer.

23 (8) Any building or facility regularly occupied by county
24 probation department personnel in which the employees perform
25 official duties of the probation department.

26 (9) Any private property, if the property was targeted in whole
27 or in part because of any of the actual or perceived characteristics
28 of the owner or occupant of the property listed in subdivision (a)
29 of Section 422.55.

30 (10) Any public or private school providing instruction in
31 kindergarten or grades 1 to 12, inclusive.

32 (c) As used in this section, “judicial officer” means a magistrate,
33 judge, justice, commissioner, referee, or any person appointed by
34 a court to serve in one of these capacities, of any state or federal
35 court located in this state.

36 (d) As used in this section, “terrorizing” means to cause a person
37 of ordinary emotions and sensibilities to fear for personal safety.

38 (e) Nothing in this section shall be construed to prohibit the
39 prosecution of any person pursuant to Section 18740 or any other
40 provision of law in lieu of prosecution pursuant to this section.

1 SEC. 499. *Section 11418 of the Penal Code, as amended by*
2 *Section 5 of Chapter 606 of the Statutes of 2002, is amended to*
3 *read:*

4 11418. (a) (1) Any person, without lawful authority, who
5 possesses, develops, manufactures, produces, transfers, acquires,
6 or retains any weapon of mass destruction, shall be punished by
7 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
8 *Section 1170* for 4, 8, or 12 years.

9 (2) Any person who commits a violation of paragraph (1) and
10 who has been previously convicted of Section 11411, 11412,
11 11413, 11418, 11418.1, 11418.5, 11419, 11460, 12303.1, 12303.2,
12 or 12303.3 shall be punished by imprisonment ~~in the state prison~~
13 *pursuant to subdivision (h) of Section 1170* for 5, 10, or 15 years.

14 (b) (1) Any person who uses or directly employs against another
15 person a weapon of mass destruction in a form that may cause
16 widespread, disabling illness or injury in human beings shall be
17 punished by imprisonment in the state prison for life.

18 (2) Any person who uses or directly employs against another
19 person a weapon of mass destruction in a form that may cause
20 widespread great bodily injury or death and causes the death of
21 any human being shall be punished by imprisonment in the state
22 prison for life without the possibility of parole. Nothing in this
23 paragraph shall prevent punishment instead under Section 190.2.

24 (3) Any person who uses a weapon of mass destruction in a
25 form that may cause widespread damage to or disruption of the
26 food supply or “source of drinking water” as defined in subdivision
27 (d) of Section 25249.11 of the Health and Safety Code shall be
28 punished by imprisonment ~~in the state prison pursuant to~~
29 *subdivision (h) of Section 1170* for 5, 8, or 12 years and by a fine
30 of not more than one hundred thousand dollars (\$100,000).

31 (4) Any person who maliciously uses against animals, crops,
32 or seed and seed stock, a weapon of mass destruction in a form
33 that may cause widespread damage to or substantial diminution
34 in the value of stock animals or crops, including seeds used for
35 crops or product of the crops, shall be punished by imprisonment
36 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
37 4, 8, or 12 years and by a fine of not more than one hundred
38 thousand dollars (\$100,000).

39 (c) Any person who uses a weapon of mass destruction in a
40 form that may cause widespread and significant damage to public

1 natural resources, including coastal waterways and beaches, public
2 parkland, surface waters, ground water, and wildlife, shall be
3 punished by imprisonment ~~in the state prison pursuant to~~
4 *subdivision (h) of Section 1170* for ~~3, 4, or 6~~ three, four, or six
5 years.

6 (d) (1) Any person who uses recombinant technology or any
7 other biological advance to create new pathogens or more virulent
8 forms of existing pathogens for use in any crime described in
9 subdivision (b) shall be punished by imprisonment ~~in the state~~
10 ~~prison pursuant to subdivision (h) of Section 1170~~ for 4, 8, or 12
11 years and by a fine of not more than two hundred fifty thousand
12 dollars (\$250,000).

13 (2) Any person who uses recombinant technology or any other
14 biological advance to create new pathogens or more virulent forms
15 of existing pathogens for use in any crime described in subdivision
16 (c) shall be punished by imprisonment ~~in the state prison pursuant~~
17 ~~to subdivision (h) of Section 1170~~ for three, six, or nine years and
18 by a fine of not more than two hundred fifty thousand dollars
19 (\$250,000).

20 (e) Nothing in this section shall be construed to prevent
21 punishment instead pursuant to any other provision of law that
22 imposes a greater or more severe punishment.

23 SEC. 500. *Section 11418 of the Penal Code, as amended by*
24 *Section 92 of Chapter 178 of the Statutes of 2010, is amended to*
25 *read:*

26 11418. (a) (1) Any person, without lawful authority, who
27 possesses, develops, manufactures, produces, transfers, acquires,
28 or retains any weapon of mass destruction, shall be punished by
29 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
30 *Section 1170* for 4, 8, or 12 years.

31 (2) Any person who commits a violation of paragraph (1) and
32 who has been previously convicted of Section 11411, 11412,
33 11413, 11418, 11418.1, 11418.5, 11419, 11460, 18715, 18725, or
34 18740 shall be punished by imprisonment ~~in the state prison~~
35 ~~pursuant to subdivision (h) of Section 1170~~ for 5, 10, or 15 years.

36 (b) (1) Any person who uses or directly employs against another
37 person a weapon of mass destruction in a form that may cause
38 widespread, disabling illness or injury in human beings shall be
39 punished by imprisonment in the state prison for life.

1 (2) Any person who uses or directly employs against another
2 person a weapon of mass destruction in a form that may cause
3 widespread great bodily injury or death and causes the death of
4 any human being shall be punished by imprisonment in the state
5 prison for life without the possibility of parole. Nothing in this
6 paragraph shall prevent punishment instead under Section 190.2.

7 (3) Any person who uses a weapon of mass destruction in a
8 form that may cause widespread damage to or disruption of the
9 food supply or “source of drinking water” as defined in subdivision
10 (d) of Section 25249.11 of the Health and Safety Code shall be
11 punished by imprisonment ~~in the state prison pursuant to~~
12 ~~subdivision (h) of Section 1170~~ for 5, 8, or 12 years and by a fine
13 of not more than one hundred thousand dollars (\$100,000).

14 (4) Any person who maliciously uses against animals, crops,
15 or seed and seed stock, a weapon of mass destruction in a form
16 that may cause widespread damage to or substantial diminution
17 in the value of stock animals or crops, including seeds used for
18 crops or product of the crops, shall be punished by imprisonment
19 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
20 4, 8, or 12 years and by a fine of not more than one hundred
21 thousand dollars (\$100,000).

22 (c) Any person who uses a weapon of mass destruction in a
23 form that may cause widespread and significant damage to public
24 natural resources, including coastal waterways and beaches, public
25 parkland, surface waters, ground water, and wildlife, shall be
26 punished by imprisonment ~~in the state prison pursuant to~~
27 ~~subdivision (h) of Section 1170~~ for 3, 4, or 6 years.

28 (d) (1) Any person who uses recombinant technology or any
29 other biological advance to create new pathogens or more virulent
30 forms of existing pathogens for use in any crime described in
31 subdivision (b) shall be punished by imprisonment ~~in the state~~
32 ~~prison pursuant to subdivision (h) of Section 1170~~ for 4, 8, or 12
33 years and by a fine of not more than two hundred fifty thousand
34 dollars (\$250,000).

35 (2) Any person who uses recombinant technology or any other
36 biological advance to create new pathogens or more virulent forms
37 of existing pathogens for use in any crime described in subdivision
38 (c) shall be punished by imprisonment ~~in the state prison pursuant~~
39 ~~to subdivision (h) of Section 1170~~ for three, six, or nine years and

1 by a fine of not more than two hundred fifty thousand dollars
2 (\$250,000).

3 (e) Nothing in this section shall be construed to prevent
4 punishment instead pursuant to any other provision of law that
5 imposes a greater or more severe punishment.

6 *SEC. 501. Section 11419 of the Penal Code is amended to*
7 *read:*

8 11419. (a) Any person or entity possessing any of the restricted
9 biological agents enumerated in subdivision (b) shall be punished
10 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
11 *Section 1170* for 4, 8, or 12 years, and by a fine of not more than
12 two hundred fifty thousand dollars (\$250,000).

13 (b) For the purposes of this section, “restricted biological agents”
14 means the following:

15 (1) Viruses: Crimean-Congo hemorrhagic fever virus, eastern
16 equine encephalitis virus, ebola viruses, equine morbilli virus,
17 lassa fever virus, marburg virus, Rift Valley fever virus, South
18 African hemorrhagic fever viruses (Junin, Machupo, Sabia, Flexal,
19 Guanarito), tick-borne encephalitis complex viruses, variola major
20 virus (smallpox virus), Venezuelan equine encephalitis virus,
21 viruses causing hantavirus pulmonary syndrome, yellow fever
22 virus.

23 (2) Bacteria: bacillus anthracis (commonly known as anthrax),
24 brucella abortus, brucella melitensis, brucella suis, burkholderia
25 (pseudomonas) mallei, burkholderia (pseudomonas) pseudomallei,
26 clostridium botulinum, francisella tularensis, yersinia pestis
27 (commonly known as plague).

28 (3) Rickettsiae: coxiella burnetii, rickettsia prowazekii, rickettsia
29 rickettsii.

30 (4) Fungi: coccidioides immitis.

31 (5) Toxins: abrin, aflatoxins, botulinum toxins, clostridium
32 perfringens epsilon toxin, conotoxins, diacetoxyscirpenol, ricin,
33 saxitoxin, shigatoxin, staphylococcal enterotoxins, tabtoxin,
34 tetrodotoxin, T-2 toxin.

35 (6) Any other microorganism, virus, infectious substance, or
36 biological product that has the same characteristics as, or is
37 substantially similar to, the substances prohibited in this section.

38 (c) (1) This section shall not apply to any physician,
39 veterinarian, pharmacist, or licensed medical practitioner authorized
40 to dispense a prescription under Section 11026 of the Health and

1 Safety Code, or universities, research institutions, or
2 pharmaceutical corporations, or any person possessing the agents
3 pursuant to a lawful prescription issued by a person defined in
4 Section 11026 of the Health and Safety Code, if the person
5 possesses vaccine strains of the viral agents Junin virus strain #1,
6 Rift Valley fever virus strain MP-12, Venezuelan equine
7 encephalitis virus strain TC-83 and yellow fever virus strain 17-D;
8 any vaccine strain described in Section 78.1 of Subpart A of Part
9 78 of Subchapter C of Chapter 1 of Title 9 of the Code of Federal
10 Regulations, or any successor provisions, and any toxin for medical
11 use, inactivated for use as vaccines, or toxin preparation for
12 biomedical research use at a median lethal dose for vertebrates of
13 more than 100 ng/kg, as well as any national standard toxin
14 required for biologic potency testing as described in Part 113
15 (commencing with Section 113.1) of Subchapter E of Chapter 1
16 of Title 9 of the Code of Federal Regulations, or any successor
17 provisions.

18 (2) For the purposes of this section, no person shall be deemed
19 to be in possession of an agent if the person is naturally exposed
20 to, or innocently infected or contaminated with, the agent.

21 (d) Any peace officer who encounters any of the restricted agents
22 mentioned above shall immediately notify and consult with a local
23 public health officer to ensure proper consideration of any public
24 health risk.

25 (e) Nothing in this section shall be construed to prevent
26 punishment instead pursuant to any other provision of law that
27 imposes a greater or more severe punishment.

28 *SEC. 501.5. Section 12021 of the Penal Code is amended to*
29 *read:*

30 12021. (a) (1) Any person who has been convicted of a felony
31 under the laws of the United States, the State of California, or any
32 other state, government, or country or of an offense enumerated
33 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
34 to the use of any narcotic drug, and who owns, purchases, receives,
35 or has in his or her possession or under his or her custody or control
36 any firearm is guilty of a felony *punishable by imprisonment in*
37 *the state prison for 16 months, or 2 or 3 years.*

38 (2) Any person who has two or more convictions for violating
39 paragraph (2) of subdivision (a) of Section 417 and who owns,
40 purchases, receives, or has in his or her possession or under his or

1 her custody or control any firearm is guilty of a felony *punishable*
2 *by imprisonment in the state prison for 16 months, or 2 or 3 years.*

3 (b) Notwithstanding subdivision (a), any person who has been
4 convicted of a felony or of an offense enumerated in Section
5 12001.6, when that conviction results from certification by the
6 juvenile court for prosecution as an adult in an adult court under
7 Section 707 of the Welfare and Institutions Code, and who owns
8 or has in his or her possession or under his or her custody or control
9 any firearm is guilty of a felony *punishable by imprisonment in*
10 *the state prison for 16 months, or 2 or 3 years.*

11 (c) (1) Except as provided in subdivision (a) or paragraph (2)
12 of this subdivision, any person who has been convicted of a
13 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
14 subdivision (d) of Section 148, Section 171b, paragraph (1) of
15 subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243,
16 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6,
17 422, 626.9, 646.9, 12023, or 12024, subdivision (b) or (d) of
18 Section 12034, Section 12040, subdivision (b) of Section 12072,
19 subdivision (a) of former Section 12100, Section 12220, 12320,
20 or 12590, or Section 8100, 8101, or 8103 of the Welfare and
21 Institutions Code, any firearm-related offense pursuant to Sections
22 871.5 and 1001.5 of the Welfare and Institutions Code, or of the
23 conduct punished in paragraph (3) of subdivision (g) of Section
24 12072, and who, within 10 years of the conviction, owns,
25 purchases, receives, or has in his or her possession or under his or
26 her custody or control, any firearm is guilty of a public offense,
27 which shall be punishable by imprisonment in a county jail not
28 exceeding one year or in the state prison, by a fine not exceeding
29 one thousand dollars (\$1,000), or by both that imprisonment and
30 fine. The court, on forms prescribed by the Department of Justice,
31 shall notify the department of persons subject to this subdivision.
32 However, the prohibition in this paragraph may be reduced,
33 eliminated, or conditioned as provided in paragraph (2) or (3).

34 (2) Any person employed as a peace officer described in Section
35 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
36 or livelihood is dependent on the ability to legally possess a
37 firearm, who is subject to the prohibition imposed by this
38 subdivision because of a conviction under Section 273.5, 273.6,
39 or 646.9, may petition the court only once for relief from this
40 prohibition. The petition shall be filed with the court in which the

1 petitioner was sentenced. If possible, the matter shall be heard
2 before the same judge who sentenced the petitioner. Upon filing
3 the petition, the clerk of the court shall set the hearing date and
4 shall notify the petitioner and the prosecuting attorney of the date
5 of the hearing. Upon making each of the following findings, the
6 court may reduce or eliminate the prohibition, impose conditions
7 on reduction or elimination of the prohibition, or otherwise grant
8 relief from the prohibition as the court deems appropriate:

9 (A) Finds by a preponderance of the evidence that the petitioner
10 is likely to use a firearm in a safe and lawful manner.

11 (B) Finds that the petitioner is not within a prohibited class as
12 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
13 and the court is not presented with any credible evidence that the
14 petitioner is a person described in Section 8100 or 8103 of the
15 Welfare and Institutions Code.

16 (C) (i) Finds that the petitioner does not have a previous
17 conviction under this subdivision no matter when the prior
18 conviction occurred.

19 (ii) In making its decision, the court shall consider the
20 petitioner's continued employment, the interest of justice, any
21 relevant evidence, and the totality of the circumstances. The court
22 shall require, as a condition of granting relief from the prohibition
23 under this section, that the petitioner agree to participate in
24 counseling as deemed appropriate by the court. Relief from the
25 prohibition shall not relieve any other person or entity from any
26 liability that might otherwise be imposed. It is the intent of the
27 Legislature that courts exercise broad discretion in fashioning
28 appropriate relief under this paragraph in cases in which relief is
29 warranted. However, nothing in this paragraph shall be construed
30 to require courts to grant relief to any particular petitioner. It is
31 the intent of the Legislature to permit persons who were convicted
32 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
33 relief from the prohibition imposed by this subdivision.

34 (3) Any person who is subject to the prohibition imposed by
35 this subdivision because of a conviction of an offense prior to that
36 offense being added to paragraph (1) may petition the court only
37 once for relief from this prohibition. The petition shall be filed
38 with the court in which the petitioner was sentenced. If possible,
39 the matter shall be heard before the same judge that sentenced the
40 petitioner. Upon filing the petition, the clerk of the court shall set

1 the hearing date and notify the petitioner and the prosecuting
2 attorney of the date of the hearing. Upon making each of the
3 following findings, the court may reduce or eliminate the
4 prohibition, impose conditions on reduction or elimination of the
5 prohibition, or otherwise grant relief from the prohibition as the
6 court deems appropriate:

7 (A) Finds by a preponderance of the evidence that the petitioner
8 is likely to use a firearm in a safe and lawful manner.

9 (B) Finds that the petitioner is not within a prohibited class as
10 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
11 and the court is not presented with any credible evidence that the
12 petitioner is a person described in Section 8100 or 8103 of the
13 Welfare and Institutions Code.

14 (C) (i) Finds that the petitioner does not have a previous
15 conviction under this subdivision, no matter when the prior
16 conviction occurred.

17 (ii) In making its decision, the court may consider the interest
18 of justice, any relevant evidence, and the totality of the
19 circumstances. It is the intent of the Legislature that courts exercise
20 broad discretion in fashioning appropriate relief under this
21 paragraph in cases in which relief is warranted. However, nothing
22 in this paragraph shall be construed to require courts to grant relief
23 to any particular petitioner.

24 (4) Law enforcement officials who enforce the prohibition
25 specified in this subdivision against a person who has been granted
26 relief pursuant to paragraph (2) or (3) shall be immune from any
27 liability for false arrest arising from the enforcement of this
28 subdivision unless the person has in his or her possession a certified
29 copy of the court order that granted the person relief from the
30 prohibition. This immunity from liability shall not relieve any
31 person or entity from any other liability that might otherwise be
32 imposed.

33 (d) (1) Any person who, as an express condition of probation,
34 is prohibited or restricted from owning, possessing, controlling,
35 receiving, or purchasing a firearm and who owns, purchases,
36 receives, or has in his or her possession or under his or her custody
37 or control, any firearm but who is not subject to subdivision (a) or
38 (c) is guilty of a public offense, which shall be punishable by
39 imprisonment in a county jail not exceeding one year or in the
40 state prison, by a fine not exceeding one thousand dollars (\$1,000),

1 or by both that imprisonment and fine. The court, on forms
2 provided by the Department of Justice, shall notify the department
3 of persons subject to this subdivision. The notice shall include a
4 copy of the order of probation and a copy of any minute order or
5 abstract reflecting the order and conditions of probation.

6 (2) For any person who is subject to subdivision (a), (b), or (c),
7 the court shall, at the time judgment is imposed, provide on a form
8 supplied by the Department of Justice, a notice to the defendant
9 prohibited by this section from owning, purchasing, receiving,
10 possessing or having under his or her custody or control, any
11 firearm. The notice shall inform the defendant of the prohibition
12 regarding firearms and include a form to facilitate the transfer of
13 firearms. Failure to provide the notice shall not be a defense to a
14 violation of this section.

15 (e) Any person who (1) is alleged to have committed an offense
16 listed in subdivision (b) of Section 707 of the Welfare and
17 Institutions Code, an offense described in subdivision (b) of Section
18 1203.073, any offense enumerated in paragraph (1) of subdivision
19 (c), or any offense described in subdivision (a) of Section 12025,
20 subdivision (a) of Section 12031, or subdivision (a) of Section
21 12034, and (2) is subsequently adjudged a ward of the juvenile
22 court within the meaning of Section 602 of the Welfare and
23 Institutions Code because the person committed an offense listed
24 in subdivision (b) of Section 707 of the Welfare and Institutions
25 Code, an offense described in subdivision (b) of Section 1203.073,
26 any offense enumerated in paragraph (1) of subdivision (c), or any
27 offense described in subdivision (a) of Section 12025, subdivision
28 (a) of Section 12031, or subdivision (a) of Section 12034, shall
29 not own, or have in his or her possession or under his or her
30 custody or control, any firearm until the age of 30 years. A
31 violation of this subdivision shall be punishable by imprisonment
32 in a county jail not exceeding one year or in the state prison, by a
33 fine not exceeding one thousand dollars (\$1,000), or by both that
34 imprisonment and fine. The juvenile court, on forms prescribed
35 by the Department of Justice, shall notify the department of persons
36 subject to this subdivision. Notwithstanding any other law, the
37 forms required to be submitted to the department pursuant to this
38 subdivision may be used to determine eligibility to acquire a
39 firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from doing so by a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2 or 646.91 of this code, or a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) The Judicial Council shall provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed within a specified time of receipt of the order. The order shall state the

1 penalties for a violation of the prohibition. The order shall also
2 state on its face the expiration date for relinquishment.

3 (4) If probation is granted upon conviction of a violation of this
4 subdivision, the court shall impose probation consistent with
5 Section 1203.097.

6 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
7 justifiable where all of the following conditions are met:

8 (A) The person found the firearm or took the firearm from a
9 person who was committing a crime against him or her.

10 (B) The person possessed the firearm no longer than was
11 necessary to deliver or transport the firearm to a law enforcement
12 agency for that agency's disposition according to law.

13 (C) If the firearm was transported to a law enforcement agency,
14 it was transported in accordance with paragraph (18) of subdivision
15 (a) of Section 12026.2.

16 (D) If the firearm is being transported to a law enforcement
17 agency, the person transporting the firearm has given prior notice
18 to the law enforcement agency that he or she is transporting the
19 firearm to the law enforcement agency for disposition according
20 to law.

21 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
22 (e), the trier of fact shall determine whether the defendant was
23 acting within the provisions of the exemption created by this
24 subdivision.

25 (3) The defendant has the burden of proving by a preponderance
26 of the evidence that he or she comes within the provisions of the
27 exemption created by this subdivision.

28 (i) Subject to available funding, the Attorney General, working
29 with the Judicial Council, the California Alliance Against Domestic
30 Violence, prosecutors, and law enforcement, probation, and parole
31 officers, shall develop a protocol for the implementation of the
32 provisions of this section. The protocol shall be designed to
33 facilitate the enforcement of restrictions on firearm ownership,
34 including provisions for giving notice to defendants who are
35 restricted, provisions for informing those defendants of the
36 procedures by which defendants shall dispose of firearms when
37 required to do so, provisions explaining how defendants shall
38 provide proof of the lawful disposition of firearms, and provisions
39 explaining how defendants may obtain possession of seized
40 firearms when legally permitted to do so pursuant to this section

1 or any other provision of law. The protocol shall be completed on
2 or before January 1, 2005.

3 *SEC. 502. Section 12021.1 of the Penal Code is amended to*
4 *read:*

5 12021.1. (a) Notwithstanding subdivision (a) of Section 12021,
6 any person who has been previously convicted of any of the
7 offenses listed in subdivision (b) and who owns or has in his or
8 her possession or under his or her custody or control any firearm
9 is guilty of a felony *punishable by imprisonment in the state prison*
10 *for 16 months, or two or three years*. A dismissal of an accusatory
11 pleading pursuant to Section 1203.4a involving an offense set forth
12 in subdivision (b) does not affect the finding of a previous
13 conviction. If probation is granted, or if the imposition or execution
14 of sentence is suspended, it shall be a condition of the probation
15 or suspension that the defendant serve at least six months in a
16 county jail.

17 (b) As used in this section, a violent offense includes any of the
18 following:

19 (1) Murder or voluntary manslaughter.

20 (2) Mayhem.

21 (3) Rape.

22 (4) Sodomy by force, violence, duress, menace, or threat of
23 great bodily harm.

24 (5) Oral copulation by force, violence, duress, menace, or threat
25 of great bodily harm.

26 (6) Lewd acts on a child under the age of 14 years.

27 (7) Any felony punishable by death or imprisonment in the state
28 prison for life.

29 (8) Any other felony in which the defendant inflicts great bodily
30 injury on any person, other than an accomplice, that has been
31 charged and proven, or any felony in which the defendant uses a
32 firearm which use has been charged and proven.

33 (9) Attempted murder.

34 (10) Assault with intent to commit rape or robbery.

35 (11) Assault with a deadly weapon or instrument on a peace
36 officer.

37 (12) Assault by a life prisoner on a noninmate.

38 (13) Assault with a deadly weapon by an inmate.

39 (14) Arson.

1 (15) Exploding a destructive device or any explosive with intent
2 to injure.

3 (16) Exploding a destructive device or any explosive causing
4 great bodily injury.

5 (17) Exploding a destructive device or any explosive with intent
6 to murder.

7 (18) Robbery.

8 (19) Kidnapping.

9 (20) Taking of a hostage by an inmate of a state prison.

10 (21) Attempt to commit a felony punishable by death or
11 imprisonment in the state prison for life.

12 (22) Any felony in which the defendant personally used a
13 dangerous or deadly weapon.

14 (23) Escape from a state prison by use of force or violence.

15 (24) Assault with a deadly weapon or force likely to produce
16 great bodily injury.

17 (25) Any felony violation of Section 186.22.

18 (26) Any attempt to commit a crime listed in this subdivision
19 other than an assault.

20 (27) Any offense enumerated in subdivision (a), (b), or (d) of
21 Section 12001.6.

22 (28) Carjacking.

23 (29) Any offense enumerated in subdivision (c) of Section
24 12001.6 if the person has two or more convictions for violating
25 paragraph (2) of subdivision (a) of Section 417.

26 (c) Any person previously convicted of any of the offenses listed
27 in subdivision (b) which conviction results from certification by
28 the juvenile court for prosecution as an adult in adult court under
29 the provisions of Section 707 of the Welfare and Institutions Code,
30 who owns or has in his or her possession or under his or her
31 custody or control any firearm is guilty of a felony *punishable by*
32 *imprisonment in the state prison for 16 months, or two or three*
33 *years*. If probation is granted, or if the imposition or execution of
34 sentence is suspended, it shall be a condition of the probation or
35 suspension that the defendant serve at least six months in a county
36 jail.

37 (d) The court shall apply the minimum sentence as specified in
38 subdivisions (a) and (c) except in unusual cases where the interests
39 of justice would best be served by granting probation or suspending
40 the imposition or execution of sentence without the imprisonment

1 required by subdivisions (a) and (c), or by granting probation or
2 suspending the imposition or execution of sentence with conditions
3 other than those set forth in subdivisions (a) and (c), in which case
4 the court shall specify on the record and shall enter on the minutes
5 the circumstances indicating that the interests of justice would best
6 be served by the disposition.

7 *SEC. 503. Section 12021.5 of the Penal Code, as amended by*
8 *Section 11 of Chapter 256 of the Statutes of 2010, is amended to*
9 *read:*

10 12021.5. (a) Every person who carries a loaded or unloaded
11 firearm on his or her person, or in a vehicle, during the commission
12 or attempted commission of any street gang crimes described in
13 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
14 the felony or attempted felony, be punished by an additional term
15 of imprisonment ~~in the state prison pursuant to subdivision (h) of~~
16 *Section 1170* for one, two, or three years. The court shall select
17 the sentence enhancement which, in the court's discretion, best
18 serves the interests of justice and shall state the reasons for its
19 choice on the record at the time of sentence, in accordance with
20 the provisions of subdivision (d) of Section 1170.1.

21 (b) Every person who carries a loaded or unloaded firearm
22 together with a detachable shotgun magazine, a detachable pistol
23 magazine, a detachable magazine, or a belt-feeding device on his
24 or her person, or in a vehicle, during the commission or attempted
25 commission of any street gang crimes described in subdivision (a)
26 or (b) of Section 186.22, shall, upon conviction of the felony or
27 attempted felony, be punished by an additional term of
28 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
29 *Section 1170* for two, three, or four years. The court shall select
30 the sentence enhancement which, in the court's discretion, best
31 serves the interests of justice and shall state the reasons for its
32 choice on the record at the time of sentence, in accordance with
33 the provisions of subdivision (d) of Section 1170.1.

34 (c) As used in this section, the following definitions shall apply:

35 (1) "Detachable magazine" means a device that is designed or
36 redesigned to do all of the following:

37 (A) To be attached to a rifle that is designed or redesigned to
38 fire ammunition.

39 (B) To be attached to, and detached from, a rifle that is designed
40 or redesigned to fire ammunition.

1 (C) To feed ammunition continuously and directly into the
2 loading mechanism of a rifle that is designed or redesigned to fire
3 ammunition.

4 (2) “Detachable pistol magazine” means a device that is
5 designed or redesigned to do all of the following:

6 (A) To be attached to a semiautomatic firearm that is not a rifle
7 or shotgun that is designed or redesigned to fire ammunition.

8 (B) To be attached to, and detached from, a firearm that is not
9 a rifle or shotgun that is designed or redesigned to fire ammunition.

10 (C) To feed ammunition continuously and directly into the
11 loading mechanism of a firearm that is not a rifle or a shotgun that
12 is designed or redesigned to fire ammunition.

13 (3) “Detachable shotgun magazine” means a device that is
14 designed or redesigned to do all of the following:

15 (A) To be attached to a firearm that is designed or redesigned
16 to fire a fixed shotgun shell through a smooth or rifled bore.

17 (B) To be attached to, and detached from, a firearm that is
18 designed or redesigned to fire a fixed shotgun shell through a
19 smooth bore.

20 (C) To feed fixed shotgun shells continuously and directly into
21 the loading mechanism of a firearm that is designed or redesigned
22 to fire a fixed shotgun shell.

23 (4) “Belt-feeding device” means a device that is designed or
24 redesigned to continuously feed ammunition into the loading
25 mechanism of a machinegun or a semiautomatic firearm.

26 (5) “Rifle” shall have the same meaning as specified in
27 paragraph (20) of subdivision (c) of Section 12020.

28 (6) “Shotgun” shall have the same meaning as specified in
29 paragraph (21) of subdivision (c) of Section 12020.

30 (d) This section shall remain in effect only until January 1, 2012,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before January 1, 2012, deletes or extends that date.

33 *SEC. 504. Section 12021.5 of the Penal Code, as amended by*
34 *Section 12 of Chapter 256 of the Statutes of 2010, is amended to*
35 *read:*

36 12021.5. (a) Every person who carries a loaded or unloaded
37 firearm on his or her person, or in a vehicle, during the commission
38 or attempted commission of any street gang crimes described in
39 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
40 the felony or attempted felony, be punished by an additional term

1 of imprisonment ~~in the state prison pursuant to subdivision (h) of~~
2 *Section 1170* for one, two, or three years in the court's discretion.
3 The court shall impose the middle term unless there are
4 circumstances in aggravation or mitigation. The court shall state
5 the reasons for its enhancement choice on the record at the time
6 of sentence.

7 (b) Every person who carries a loaded or unloaded firearm
8 together with a detachable shotgun magazine, a detachable pistol
9 magazine, a detachable magazine, or a belt-feeding device on his
10 or her person, or in a vehicle, during the commission or attempted
11 commission of any street gang crimes described in subdivision (a)
12 or (b) of *Section 186.22*, shall, upon conviction of the felony or
13 attempted felony, be punished by an additional term of
14 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
15 *Section 1170* for two, three, or four years in the court's discretion.
16 The court shall impose the middle term unless there are
17 circumstances in aggravation or mitigation. The court shall state
18 the reasons for its enhancement choice on the record at the time
19 of sentence.

20 (c) As used in this section, the following definitions shall apply:

21 (1) "Detachable magazine" means a device that is designed or
22 redesigned to do all of the following:

23 (A) To be attached to a rifle that is designed or redesigned to
24 fire ammunition.

25 (B) To be attached to, and detached from, a rifle that is designed
26 or redesigned to fire ammunition.

27 (C) To feed ammunition continuously and directly into the
28 loading mechanism of a rifle that is designed or redesigned to fire
29 ammunition.

30 (2) "Detachable pistol magazine" means a device that is
31 designed or redesigned to do all of the following:

32 (A) To be attached to a semiautomatic firearm that is not a rifle
33 or shotgun that is designed or redesigned to fire ammunition.

34 (B) To be attached to, and detached from, a firearm that is not
35 a rifle or shotgun that is designed or redesigned to fire ammunition.

36 (C) To feed ammunition continuously and directly into the
37 loading mechanism of a firearm that is not a rifle or a shotgun that
38 is designed or redesigned to fire ammunition.

39 (3) "Detachable shotgun magazine" means a device that is
40 designed or redesigned to do all of the following:

1 (A) To be attached to a firearm that is designed or redesigned
2 to fire a fixed shotgun shell through a smooth or rifled bore.

3 (B) To be attached to, and detached from, a firearm that is
4 designed or redesigned to fire a fixed shotgun shell through a
5 smooth bore.

6 (C) To feed fixed shotgun shells continuously and directly into
7 the loading mechanism of a firearm that is designed or redesigned
8 to fire a fixed shotgun shell.

9 (4) "Belt-feeding device" means a device that is designed or
10 redesigned to continuously feed ammunition into the loading
11 mechanism of a machinegun or a semiautomatic firearm.

12 (5) "Rifle" shall have the same meaning as specified in
13 paragraph (20) of subdivision (c) of Section 12020.

14 (6) "Shotgun" shall have the same meaning as specified in
15 paragraph (21) of subdivision (c) of Section 12020.

16 (d) This section shall become operative on January 1, 2012.

17 *SEC. 505. Section 12022 of the Penal Code, as amended by*
18 *Section 3 of Chapter 494 of the Statutes of 2004, is amended to*
19 *read:*

20 12022. (a) (1) Except as provided in subdivisions (c) and (d),
21 any person who is armed with a firearm in the commission of a
22 felony or attempted felony shall be punished by an additional and
23 consecutive term of imprisonment ~~in the state prison pursuant to~~
24 *subdivision (h) of Section 1170* for one year, unless the arming is
25 an element of that offense. This additional term shall apply to any
26 person who is a principal in the commission of a felony or
27 attempted felony if one or more of the principals is armed with a
28 firearm, whether or not the person is personally armed with a
29 firearm.

30 (2) Except as provided in subdivision (c), and notwithstanding
31 subdivision (d), if the firearm is an assault weapon, as defined in
32 Section 12276 or Section 12276.1, or a machinegun, as defined in
33 Section 12200, or a .50 BMG rifle, as defined in Section 12278,
34 the additional and consecutive term described in this subdivision
35 shall be *imprisonment pursuant to subdivision (h) of Section 1170*
36 *for* three years whether or not the arming is an element of the
37 offense of which the person was convicted. The additional term
38 provided in this paragraph shall apply to any person who is a
39 principal in the commission of a felony or attempted felony if one
40 or more of the principals is armed with an assault weapon or

1 machinegun, or a .50 BMG rifle, whether or not the person is
2 personally armed with an assault weapon or machinegun, or a .50
3 BMG rifle.

4 (b) (1) Any person who personally uses a deadly or dangerous
5 weapon in the commission of a felony or attempted felony shall
6 be punished by an additional and consecutive term of imprisonment
7 ~~in the state prison pursuant to subdivision (h) of Section 1170 for~~
8 one year, unless use of a deadly or dangerous weapon is an element
9 of that offense.

10 (2) If the person described in paragraph (1) has been convicted
11 of carjacking or attempted carjacking, the additional term shall be
12 ~~imprisonment pursuant to subdivision (h) of Section 1170 for~~ one,
13 two, or three years.

14 (3) When a person is found to have personally used a deadly or
15 dangerous weapon in the commission of a felony or attempted
16 felony as provided in this subdivision and the weapon is owned
17 by that person, the court shall order that the weapon be deemed a
18 nuisance and disposed of in the manner provided in Section 12028.

19 (c) Notwithstanding the enhancement set forth in subdivision
20 (a), any person who is personally armed with a firearm in the
21 commission of a violation or attempted violation of Section 11351,
22 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379,
23 11379.5, or 11379.6 of the Health and Safety Code, shall be
24 punished by an additional and consecutive term of imprisonment
25 ~~in the state prison pursuant to subdivision (h) of Section 1170 for~~
26 three, four, or five years.

27 (d) Notwithstanding the enhancement set forth in subdivision
28 (a), any person who is not personally armed with a firearm who,
29 knowing that another principal is personally armed with a firearm,
30 is a principal in the commission of an offense or attempted offense
31 specified in subdivision (c), shall be punished by an additional and
32 consecutive term of imprisonment ~~in the state prison pursuant to~~
33 ~~subdivision (h) of Section 1170 for~~ one, two, or three years.

34 (e) For purposes of imposing an enhancement under Section
35 1170.1, the enhancements under this section shall count as one,
36 single enhancement.

37 (f) Notwithstanding any other provision of law, the court may
38 strike the additional punishment for the enhancements provided
39 in subdivision (c) or (d) in an unusual case where the interests of
40 justice would best be served, if the court specifies on the record

1 and enters into the minutes the circumstances indicating that the
2 interests of justice would best be served by that disposition.

3 *SEC. 506. Section 12022 of the Penal Code, as added by*
4 *Section 5 of Chapter 711 of the Statutes of 2010, is amended to*
5 *read:*

6 12022. (a) (1) Except as provided in subdivisions (c) and (d),
7 any person who is armed with a firearm in the commission of a
8 felony or attempted felony shall be punished by an additional and
9 consecutive term of imprisonment ~~in the state prison~~ *pursuant to*
10 *subdivision (h) of Section 1170* for one year, unless the arming is
11 an element of that offense. This additional term shall apply to any
12 person who is a principal in the commission of a felony or
13 attempted felony if one or more of the principals is armed with a
14 firearm, whether or not the person is personally armed with a
15 firearm.

16 (2) Except as provided in subdivision (c), and notwithstanding
17 subdivision (d), if the firearm is an assault weapon, as defined in
18 Section 30510 or Section 30515, or a machinegun, as defined in
19 Section 16880, or a .50 BMG rifle, as defined in Section 30530,
20 the additional and consecutive term described in this subdivision
21 shall be three years ~~imprisonment pursuant to subdivision (h) of~~
22 *Section 1170* whether or not the arming is an element of the offense
23 of which the person was convicted. The additional term provided
24 in this paragraph shall apply to any person who is a principal in
25 the commission of a felony or attempted felony if one or more of
26 the principals is armed with an assault weapon or machinegun, or
27 a .50 BMG rifle, whether or not the person is personally armed
28 with an assault weapon or machinegun, or a .50 BMG rifle.

29 (b) (1) Any person who personally uses a deadly or dangerous
30 weapon in the commission of a felony or attempted felony shall
31 be punished by an additional and consecutive term of imprisonment
32 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
33 one year, unless use of a deadly or dangerous weapon is an element
34 of that offense.

35 (2) If the person described in paragraph (1) has been convicted
36 of carjacking or attempted carjacking, the additional term shall be
37 *pursuant to subdivision (h) of Section 1170* for one, two, or three
38 years.

39 (3) When a person is found to have personally used a deadly or
40 dangerous weapon in the commission of a felony or attempted

felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 507. *Section 12022.5 of the Penal Code, as amended by Section 4 of Chapter 494 of the Statutes of 2004, is amended to read:*

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the

1 commission of a felony or attempted felony, shall be punished by
2 an additional and consecutive term of imprisonment ~~in the state~~
3 ~~prison pursuant to subdivision (h) of Section 1170~~ for 5, 6, or 10
4 years.

5 (c) Notwithstanding Section 1385 or any other provisions of
6 law, the court shall not strike an allegation under this section or a
7 finding bringing a person within the provisions of this section.

8 (d) Notwithstanding the limitation in subdivision (a) relating to
9 being an element of the offense, the additional term provided by
10 this section shall be imposed for any violation of Section 245 if a
11 firearm is used, or for murder if the killing is perpetrated by means
12 of shooting a firearm from a motor vehicle, intentionally at another
13 person outside of the vehicle with the intent to inflict great bodily
14 injury or death.

15 (e) When a person is found to have personally used a firearm,
16 an assault weapon, a machinegun, or a .50 BMG rifle, in the
17 commission of a felony or attempted felony as provided in this
18 section and the firearm, assault weapon, machinegun, or a .50
19 BMG rifle, is owned by that person, the court shall order that the
20 firearm be deemed a nuisance and disposed of in the manner
21 provided in Section 12028.

22 (f) For purposes of imposing an enhancement under Section
23 1170.1, the enhancements under this section shall count as one,
24 single enhancement.

25 *SEC. 508. Section 12022.5 of the Penal Code, as added by*
26 *Section 5 of Chapter 711 of the Statutes of 2010, is amended to*
27 *read:*

28 12022.5. (a) Except as provided in subdivision (b), any person
29 who personally uses a firearm in the commission of a felony or
30 attempted felony shall be punished by an additional and
31 consecutive term of imprisonment ~~in the state prison pursuant to~~
32 ~~subdivision (h) of Section 1170~~ for 3, 4, or 10 years, unless use of
33 a firearm is an element of that offense.

34 (b) Notwithstanding subdivision (a), any person who personally
35 uses an assault weapon, as specified in Section 30510 or Section
36 30515, or a machinegun, as defined in Section 16880, in the
37 commission of a felony or attempted felony, shall be punished by
38 an additional and consecutive term of imprisonment ~~in the state~~
39 ~~prison pursuant to subdivision (h) of Section 1170~~ for 5, 6, or 10
40 years.

(c) Notwithstanding Section 1385 or any other provisions of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 509. Section 12022.9 of the Penal Code, as amended by Section 7 of Chapter 126 of the Statutes of 2002, is amended to read:

12022.9. Any person who, during the commission of a felony or attempted felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional and consecutive term of imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for five years. The additional term provided in this subdivision shall not be imposed unless the fact of that injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

Nothing in this section shall be construed as affecting the applicability of subdivision (a) of Section 187.

SEC. 510. Section 12022.9 of the Penal Code, as added by Section 5 of Chapter 711 of the Statutes of 2010, is amended to read:

1 12022.9. Any person who, during the commission of a felony
2 or attempted felony, knows or reasonably should know that the
3 victim is pregnant, and who, with intent to inflict injury, and
4 without the consent of the woman, personally inflicts injury upon
5 a pregnant woman that results in the termination of the pregnancy
6 shall be punished by an additional and consecutive term of
7 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
8 *Section 1170* for five years. The additional term provided in this
9 subdivision shall not be imposed unless the fact of that injury is
10 charged in the accusatory pleading and admitted or found to be
11 true by the trier of fact.

12 Nothing in this section shall be construed as affecting the
13 applicability of subdivision (a) of Section 187.

14 *SEC. 511. Section 12025 of the Penal Code is amended to*
15 *read:*

16 12025. (a) A person is guilty of carrying a concealed firearm
17 when he or she does any of the following:

18 (1) Carries concealed within any vehicle which is under his or
19 her control or direction any pistol, revolver, or other firearm
20 capable of being concealed upon the person.

21 (2) Carries concealed upon his or her person any pistol, revolver,
22 or other firearm capable of being concealed upon the person.

23 (3) Causes to be carried concealed within any vehicle in which
24 he or she is an occupant any pistol, revolver, or other firearm
25 capable of being concealed upon the person.

26 (b) Carrying a concealed firearm in violation of this section is
27 punishable, as follows:

28 (1) Where the person previously has been convicted of any
29 felony, or of any crime made punishable by this chapter, as a felony
30 *punishable by imprisonment pursuant to subdivision (h) of Section*
31 *1170.*

32 (2) Where the firearm is stolen and the person knew or had
33 reasonable cause to believe that it was stolen, as a felony
34 *punishable by imprisonment pursuant to subdivision (h) of Section*
35 *1170.*

36 (3) Where the person is an active participant in a criminal street
37 gang, as defined in subdivision (a) of Section 186.22, under the
38 Street Terrorism Enforcement and Prevention Act (Chapter 11
39 (commencing with Section 186.20) of Title 7 of Part 1), as a felony

1 *punishable by imprisonment pursuant to subdivision (h) of Section*
2 *1170.*

3 (4) Where the person is not in lawful possession of the firearm,
4 as defined in this section, or the person is within a class of persons
5 prohibited from possessing or acquiring a firearm pursuant to
6 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of
7 the Welfare and Institutions Code, as a felony *punishable by*
8 *imprisonment pursuant to subdivision (h) of Section 1170.*

9 (5) Where the person has been convicted of a crime against a
10 person or property, or of a narcotics or dangerous drug violation,
11 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
12 *Section 1170*, or by imprisonment in a county jail not to exceed
13 one year, by a fine not to exceed one thousand dollars (\$1,000),
14 or by both that imprisonment and fine.

15 (6) By imprisonment ~~in the state prison~~ *pursuant to subdivision*
16 *(h) of Section 1170*, or by imprisonment in a county jail not to
17 exceed one year, by a fine not to exceed one thousand dollars
18 (\$1,000), or by both that fine and imprisonment if both of the
19 following conditions are met:

20 (A) Both the pistol, revolver, or other firearm capable of being
21 concealed upon the person and the unexpended ammunition capable
22 of being discharged from that firearm are either in the immediate
23 possession of the person or readily accessible to that person, or
24 the pistol, revolver, or other firearm capable of being concealed
25 upon the person is loaded as defined in subdivision (g) of Section
26 12031.

27 (B) The person is not listed with the Department of Justice
28 pursuant to paragraph (1) of subdivision (c) of Section 11106, as
29 the registered owner of that pistol, revolver, or other firearm
30 capable of being concealed upon the person.

31 (7) In all cases other than those specified in paragraphs (1) to
32 (6), inclusive, by imprisonment in a county jail not to exceed one
33 year, by a fine not to exceed one thousand dollars (\$1,000), or by
34 both that imprisonment and fine.

35 (c) A peace officer may arrest a person for a violation of
36 paragraph (6) of subdivision (b) if the peace officer has probable
37 cause to believe that the person is not listed with the Department
38 of Justice pursuant to paragraph (1) of subdivision (c) of Section
39 11106 as the registered owner of the pistol, revolver, or other
40 firearm capable of being concealed upon the person, and one or

1 more of the conditions in subparagraph (A) of paragraph (6) of
2 subdivision (b) is met.

3 (d) (1) Every person convicted under this section who
4 previously has been convicted of a misdemeanor offense
5 enumerated in Section 12001.6 shall be punished by imprisonment
6 in a county jail for at least three months and not exceeding six
7 months, or, if granted probation, or if the execution or imposition
8 of sentence is suspended, it shall be a condition thereof that he or
9 she be imprisoned in a county jail for at least three months.

10 (2) Every person convicted under this section who has
11 previously been convicted of any felony, or of any crime made
12 punishable by this chapter, if probation is granted, or if the
13 execution or imposition of sentence is suspended, it shall be a
14 condition thereof that he or she be imprisoned in a county jail for
15 not less than three months.

16 (e) The court shall apply the three-month minimum sentence
17 as specified in subdivision (d), except in unusual cases where the
18 interests of justice would best be served by granting probation or
19 suspending the imposition or execution of sentence without the
20 minimum imprisonment required in subdivision (d) or by granting
21 probation or suspending the imposition or execution of sentence
22 with conditions other than those set forth in subdivision (d), in
23 which case, the court shall specify on the record and shall enter
24 on the minutes the circumstances indicating that the interests of
25 justice would best be served by that disposition.

26 (f) Firearms carried openly in belt holsters are not concealed
27 within the meaning of this section.

28 (g) For purposes of this section, “lawful possession of the
29 firearm” means that the person who has possession or custody of
30 the firearm either lawfully owns the firearm or has the permission
31 of the lawful owner or a person who otherwise has apparent
32 authority to possess or have custody of the firearm. A person who
33 takes a firearm without the permission of the lawful owner or
34 without the permission of a person who has lawful custody of the
35 firearm does not have lawful possession of the firearm.

36 (h) (1) The district attorney of each county shall submit annually
37 a report on or before June 30, to the Attorney General consisting
38 of profiles by race, age, gender, and ethnicity of any person charged
39 with a felony or a misdemeanor under this section and any other
40 offense charged in the same complaint, indictment, or information.

1 (2) The Attorney General shall submit annually, a report on or
2 before December 31, to the Legislature compiling all of the reports
3 submitted pursuant to paragraph (1).

4 (3) This subdivision shall remain operative until January 1,
5 2005, and as of that date shall be repealed.

6 *SEC. 512. Section 12035 of the Penal Code is amended to*
7 *read:*

8 12035. (a) As used in this section, the following definitions
9 apply:

10 (1) "Locking device" means a device that is designed to prevent
11 the firearm from functioning and when applied to the firearm,
12 renders the firearm inoperable.

13 (2) "Loaded firearm" has the same meaning as set forth in
14 subdivision (g) of Section 12031.

15 (3) "Child" means a person under 18 years of age.

16 (4) "Great bodily injury" has the same meaning as set forth in
17 Section 12022.7.

18 (5) "Locked container" has the same meaning as set forth in
19 subdivision (d) of Section 12026.2.

20 (b) (1) Except as provided in subdivision (c), a person commits
21 the crime of "criminal storage of a firearm of the first degree" if
22 he or she keeps any loaded firearm within any premises that are
23 under his or her custody or control and he or she knows or
24 reasonably should know that a child is likely to gain access to the
25 firearm without the permission of the child's parent or legal
26 guardian and the child obtains access to the firearm and thereby
27 causes death or great bodily injury to himself, herself, or any other
28 person.

29 (2) Except as provided in subdivision (c), a person commits the
30 crime of "criminal storage of a firearm of the second degree" if
31 he or she keeps any loaded firearm within any premises that are
32 under his or her custody or control and he or she knows or
33 reasonably should know that a child is likely to gain access to the
34 firearm without the permission of the child's parent or legal
35 guardian and the child obtains access to the firearm and thereby
36 causes injury, other than great bodily injury, to himself, herself,
37 or any other person, or carries the firearm either to a public place
38 or in violation of Section 417.

39 (c) Subdivision (b) shall not apply whenever any of the
40 following occurs:

1 (1) The child obtains the firearm as a result of an illegal entry
2 to any premises by any person.

3 (2) The firearm is kept in a locked container or in a location
4 that a reasonable person would believe to be secure.

5 (3) The firearm is carried on the person or within such a close
6 proximity thereto that the individual can readily retrieve and use
7 the firearm as if carried on the person.

8 (4) The firearm is locked with a locking device that has rendered
9 the firearm inoperable.

10 (5) The person is a peace officer or a member of the armed
11 forces or National Guard and the child obtains the firearm during,
12 or incidental to, the performance of the person's duties.

13 (6) The child obtains, or obtains and discharges, the firearm in
14 a lawful act of self-defense or defense of another person, or
15 persons.

16 (7) The person who keeps a loaded firearm on any premise that
17 is under his or her custody or control has no reasonable expectation,
18 based on objective facts and circumstances, that a child is likely
19 to be present on the premises.

20 (d) Criminal storage of a firearm is punishable as follows:

21 (1) Criminal storage of a firearm in the first degree, by
22 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
23 *Section 1170* for 16 months, or two or three years, by a fine not
24 exceeding ten thousand dollars (\$10,000), or by both that
25 imprisonment and fine; or by imprisonment in a county jail not
26 exceeding one year, by a fine not exceeding one thousand dollars
27 (\$1,000), or by both that fine and imprisonment.

28 (2) Criminal storage of a firearm in the second degree, by
29 imprisonment in a county jail not exceeding one year, by a fine
30 not exceeding one thousand dollars (\$1,000), or by both that
31 imprisonment and fine.

32 (e) If the person who allegedly violated this section is the parent
33 or guardian of a child who is injured or who dies as the result of
34 an accidental shooting, the district attorney shall consider, among
35 other factors, the impact of the injury or death on the person alleged
36 to have violated this section when deciding whether to prosecute
37 an alleged violation. It is the Legislature's intent that a parent or
38 guardian of a child who is injured or who dies as the result of an
39 accidental shooting shall be prosecuted only in those instances in
40 which the parent or guardian behaved in a grossly negligent manner

1 or where similarly egregious circumstances exist. This subdivision
2 shall not otherwise restrict, in any manner, the factors that a district
3 attorney may consider when deciding whether to prosecute alleged
4 violations of this section.

5 (f) If the person who allegedly violated this section is the parent
6 or guardian of a child who is injured or who dies as the result of
7 an accidental shooting, no arrest of the person for the alleged
8 violation of this section shall occur until at least seven days after
9 the date upon which the accidental shooting occurred.

10 In addition to the limitation contained in this subdivision, a law
11 enforcement officer shall consider the health status of a child who
12 suffers great bodily injury as the result of an accidental shooting
13 prior to arresting a person for a violation of this section, if the
14 person to be arrested is the parent or guardian of the injured child.
15 The intent of this subdivision is to encourage law enforcement
16 officials to delay the arrest of a parent or guardian of a seriously
17 injured child while the child remains on life-support equipment or
18 is in a similarly critical medical condition.

19 (g) (1) The fact that the person who allegedly violated this
20 section attended a firearm safety training course prior to the
21 purchase of the firearm that is obtained by a child in violation of
22 this section shall be considered a mitigating factor by a district
23 attorney when he or she is deciding whether to prosecute the
24 alleged violation.

25 (2) In any action or trial commenced under this section, the fact
26 that the person who allegedly violated this section attended a
27 firearm safety training course prior to the purchase of the firearm
28 that is obtained by a child in violation of this section, shall be
29 admissible.

30 (h) Every person licensed under Section 12071 shall post within
31 the licensed premises the notice required by paragraph (7) of
32 subdivision (b) of that section, disclosing the duty imposed by this
33 section upon any person who keeps a loaded firearm.

34 *SEC. 513. Section 12040 of the Penal Code is amended to*
35 *read:*

36 12040. (a) A person commits criminal possession of a firearm
37 when he or she carries a firearm in a public place or on any public
38 street while masked so as to hide his or her identity.

39 (b) Criminal possession of a firearm is punishable by
40 imprisonment in the state prison pursuant to subdivision (h) of

1 *Section 1170* or by imprisonment in a county jail not to exceed
2 one year.

3 (c) Subdivision (a) shall not apply to the following:

4 (1) A peace officer who is in the performance of his or her
5 duties.

6 (2) Full-time paid peace officers of other states and the federal
7 government who are carrying out official duties while in this state.

8 (3) Any person summoned by any of the officers enumerated
9 in paragraph (1) or (2) to assist in making arrests or preserving the
10 peace while he or she is actually engaged in assisting that officer.

11 (4) The possession of an unloaded firearm or a firearm loaded
12 with blank ammunition by an authorized participant in, or while
13 rehearsing for, a motion picture, television, video production,
14 entertainment event, entertainment activity, or lawfully organized
15 and conducted activity when the participant lawfully uses the
16 firearm as part of that production, event, or activity.

17 (5) The possession of a firearm by a licensed hunter while
18 actually engaged in lawful hunting, or while going directly to or
19 returning directly from the hunting expedition.

20 *SEC. 514. Section 12072 of the Penal Code is amended to*
21 *read:*

22 12072. (a) (1) No person, corporation, or firm shall knowingly
23 supply, deliver, sell, or give possession or control of a firearm to
24 any person within any of the classes prohibited by Section 12021
25 or 12021.1.

26 (2) No person, corporation, or dealer shall sell, supply, deliver,
27 or give possession or control of a firearm to any person whom he
28 or she has cause to believe to be within any of the classes
29 prohibited by Section 12021 or 12021.1 of this code or Section
30 8100 or 8103 of the Welfare and Institutions Code.

31 (3) (A) No person, corporation, or firm shall sell, loan, or
32 transfer a firearm to a minor, nor sell a handgun to an individual
33 under 21 years of age.

34 (B) Subparagraph (A) shall not apply to or affect those
35 circumstances set forth in subdivision (p) of Section 12078.

36 (4) No person, corporation, or dealer shall sell, loan, or transfer
37 a firearm to any person whom he or she knows or has cause to
38 believe is not the actual purchaser or transferee of the firearm, or
39 to any person who is not the person actually being loaned the

1 firearm, if the person, corporation, or dealer has either of the
2 following:

3 (A) Knowledge that the firearm is to be subsequently loaned,
4 sold, or transferred to avoid the provisions of subdivision (c) or
5 (d).

6 (B) Knowledge that the firearm is to be subsequently loaned,
7 sold, or transferred to avoid the requirements of any exemption to
8 the provisions of subdivision (c) or (d).

9 (5) No person, corporation, or dealer shall acquire a firearm for
10 the purpose of selling, transferring, or loaning the firearm, if the
11 person, corporation, or dealer has either of the following:

12 (A) In the case of a dealer, intent to violate subdivision (b) or
13 (c).

14 (B) In any other case, intent to avoid either of the following:

15 (i) The provisions of subdivision (d).

16 (ii) The requirements of any exemption to the provisions of
17 subdivision (d).

18 (6) The dealer shall comply with the provisions of paragraph
19 (18) of subdivision (b) of Section 12071.

20 (7) The dealer shall comply with the provisions of paragraph
21 (19) of subdivision (b) of Section 12071.

22 (8) No person shall sell or otherwise transfer his or her
23 ownership in a handgun unless the firearm bears either:

24 (A) The name of the manufacturer, the manufacturer's make or
25 model, and a manufacturer's serial number assigned to that firearm.

26 (B) The identification number or mark assigned to the firearm
27 by the Department of Justice pursuant to Section 12092.

28 (9) (A) No person shall make an application to purchase more
29 than one handgun within any 30-day period.

30 (B) Subparagraph (A) shall not apply to any of the following:

31 (i) Any law enforcement agency.

32 (ii) Any agency duly authorized to perform law enforcement
33 duties.

34 (iii) Any state or local correctional facility.

35 (iv) Any private security company licensed to do business in
36 California.

37 (v) Any person who is properly identified as a full-time paid
38 peace officer, as defined in Chapter 4.5 (commencing with Section
39 830) of Title 3 of Part 2, and who is authorized to, and does carry

1 a firearm during the course and scope of his or her employment
2 as a peace officer.

3 (vi) Any motion picture, television, or video production
4 company or entertainment or theatrical company whose production
5 by its nature involves the use of a firearm.

6 (vii) Any person who may, pursuant to Section 12078, claim
7 an exemption from the waiting period set forth in subdivision (c)
8 of this section.

9 (viii) Any transaction conducted through a licensed firearms
10 dealer pursuant to Section 12082.

11 (ix) Any person who is licensed as a collector pursuant to
12 Chapter 44 (commencing with Section 921) of Title 18 of the
13 United States Code and the regulations issued pursuant thereto
14 and who has a current certificate of eligibility issued to him or her
15 by the Department of Justice pursuant to Section 12071.

16 (x) The exchange of a handgun where the dealer purchased that
17 firearm from the person seeking the exchange within the 30-day
18 period immediately preceding the date of exchange or replacement.

19 (xi) The replacement of a handgun when the person's handgun
20 was lost or stolen, and the person reported that firearm lost or
21 stolen prior to the completion of the application to purchase to any
22 local law enforcement agency of the city, county, or city and county
23 in which he or she resides.

24 (xii) The return of any handgun to its owner.

25 (xiii) Community colleges that are certified by the Commission
26 on Peace Officer Standards and Training to present the law
27 enforcement academy basic course or other commission-certified
28 law enforcement training.

29 (b) No person licensed under Section 12071 shall supply, sell,
30 deliver, or give possession or control of a handgun to any person
31 under the age of 21 years or any other firearm to a person under
32 the age of 18 years.

33 (c) No dealer, whether or not acting pursuant to Section 12082,
34 shall deliver a firearm to a person, as follows:

35 (1) Within 10 days of the application to purchase, or, after notice
36 by the department pursuant to subdivision (d) of Section 12076,
37 within 10 days of the submission to the department of any
38 correction to the application, or within 10 days of the submission
39 to the department of any fee required pursuant to subdivision (e)
40 of Section 12076, whichever is later.

1 (2) Unless unloaded and securely wrapped or unloaded and in
2 a locked container.

3 (3) Unless the purchaser, transferee, or person being loaned the
4 firearm presents clear evidence of his or her identity and age, as
5 defined in Section 12071, to the dealer.

6 (4) Whenever the dealer is notified by the Department of Justice
7 that the person is prohibited by state or federal law from possessing,
8 receiving, owning, or purchasing a firearm.

9 (5) (A) Commencing April 1, 1994, and until January 1, 2003,
10 no handgun shall be delivered unless the purchaser, transferee, or
11 person being loaned the firearm presents to the dealer a basic
12 firearms safety certificate.

13 (B) Commencing January 1, 2003, no handgun shall be delivered
14 unless the purchaser, transferee, or person being loaned the
15 handgun presents a handgun safety certificate to the dealer.

16 (6) No handgun shall be delivered whenever the dealer is
17 notified by the Department of Justice that within the preceding
18 30-day period the purchaser has made another application to
19 purchase a handgun and that the previous application to purchase
20 involved none of the entities specified in subparagraph (B) of
21 paragraph (9) of subdivision (a).

22 (d) Where neither party to the transaction holds a dealer's license
23 issued pursuant to Section 12071, the parties to the transaction
24 shall complete the sale, loan, or transfer of that firearm through a
25 licensed firearms dealer pursuant to Section 12082.

26 (e) No person may commit an act of collusion relating to Article
27 8 (commencing with Section 12800) of Chapter 6. For purposes
28 of this section and Section 12071, collusion may be proven by any
29 one of the following factors:

30 (1) Answering a test applicant's questions during an objective
31 test relating to firearms safety.

32 (2) Knowingly grading the examination falsely.

33 (3) Providing an advance copy of the test to an applicant.

34 (4) Taking or allowing another person to take the basic firearms
35 safety course for one who is the applicant for a basic firearms
36 safety certificate or a handgun safety certificate.

37 (5) Allowing another to take the objective test for the applicant,
38 purchaser, or transferee.

39 (6) Using or allowing another to use one's identification, proof
40 of residency, or thumbprint.

1 (7) Allowing others to give unauthorized assistance during the
2 examination.

3 (8) Reference to unauthorized materials during the examination
4 and cheating by the applicant.

5 (9) Providing originals or photocopies of the objective test, or
6 any version thereof, to any person other than as authorized by the
7 department.

8 (f) (1) (A) Commencing July 1, 2008, a person who is licensed
9 pursuant to Chapter 44 (commencing with Section 921) of Title
10 18 of the United States Code may not deliver, sell, or transfer a
11 firearm to a person in California who is licensed pursuant to
12 Chapter 44 (commencing with Section 921) of Title 18 of the
13 United States Code unless, prior to delivery, the person intending
14 to deliver, sell, or transfer the firearm obtains a verification number
15 via the Internet for the intended delivery, sale, or transfer, from
16 the department. If Internet service is unavailable to either the
17 department or the licensee due to a technical or other malfunction,
18 or a federal firearms licensee who is located outside of California
19 does not possess a computer or have Internet access, alternate
20 means of communication, including facsimile or telephone, shall
21 be made available for a licensee to obtain a verification number
22 in order to comply with this section.

23 (B) For every verification number request received pursuant to
24 this section, the department shall determine whether the intended
25 recipient is on the centralized list of firearms dealers pursuant to
26 this section, or the centralized list of exempted federal firearms
27 licensees pursuant to subdivision (a) of Section 12083, or the
28 centralized list of firearms manufacturers pursuant to subdivision
29 (f) of Section 12086.

30 (C) If the department finds after the reviews specified in
31 subparagraph (B) that the intended recipient is authorized to receive
32 the firearm shipment, the department shall issue to the inquiring
33 party a unique verification number for the intended delivery, sale,
34 or transfer. One verification number shall be issued for each
35 delivery, sale, or transfer, which may involve multiple firearms.
36 In addition to the unique verification number, the department may
37 provide to the inquiring party information necessary for
38 determining the eligibility of the intended recipient to receive the
39 firearm. The person intending to deliver, sell, or transfer the firearm
40 shall provide the unique verification number to the recipient along

1 with the firearm upon delivery, in a manner to be determined by
2 the department.

3 (D) If the department finds after the reviews specified in
4 subparagraph (B) that the intended recipient is not authorized to
5 receive the firearm shipment, the department shall notify the
6 inquiring party that the intended recipient is ineligible to receive
7 the shipment.

8 (E) The department shall prescribe the manner in which the
9 verification numbers may be requested via the Internet, or by
10 alternate means of communication, such as by facsimile or
11 telephone, including all required enrollment information and
12 procedures.

13 (2) (A) On or after January 1, 1998, within 60 days of bringing
14 a handgun into this state, a personal handgun importer shall do
15 one of the following:

16 (i) Forward by prepaid mail or deliver in person to the
17 Department of Justice, a report prescribed by the department
18 including information concerning that individual and a description
19 of the firearm in question.

20 (ii) Sell or transfer the firearm in accordance with the provisions
21 of subdivision (d) or in accordance with the provisions of an
22 exemption from subdivision (d).

23 (iii) Sell or transfer the firearm to a dealer licensed pursuant to
24 Section 12071.

25 (iv) Sell or transfer the firearm to a sheriff or police department.

26 (B) If the personal handgun importer sells or transfers the
27 handgun pursuant to subdivision (d) of Section 12072 and the sale
28 or transfer cannot be completed by the dealer to the purchaser or
29 transferee, and the firearm can be returned to the personal handgun
30 importer, the personal handgun importer shall have complied with
31 the provisions of this paragraph.

32 (C) The provisions of this paragraph are cumulative and shall
33 not be construed as restricting the application of any other law.
34 However, an act or omission punishable in different ways by this
35 section and different provisions of the Penal Code shall not be
36 punished under more than one provision.

37 (D) (i) On and after January 1, 1998, the department shall
38 conduct a public education and notification program regarding this
39 paragraph to ensure a high degree of publicity of the provisions
40 of this paragraph.

1 (ii) As part of the public education and notification program
2 described in this subparagraph, the department shall do all of the
3 following:

4 (I) Work in conjunction with the Department of Motor Vehicles
5 to ensure that any person who is subject to this paragraph is advised
6 of the provisions of this paragraph, and provided with blank copies
7 of the report described in clause (i) of subparagraph (A) at the time
8 that person applies for a California driver's license or registers his
9 or her motor vehicle in accordance with the Vehicle Code.

10 (II) Make the reports referred to in clause (i) of subparagraph
11 (A) available to dealers licensed pursuant to Section 12071.

12 (III) Make the reports referred to in clause (i) of subparagraph
13 (A) available to law enforcement agencies.

14 (IV) Make persons subject to the provisions of this paragraph
15 aware of the fact that reports referred to in clause (i) of
16 subparagraph (A) may be completed at either the licensed premises
17 of dealers licensed pursuant to Section 12071 or at law enforcement
18 agencies, that it is advisable to do so for the sake of accuracy and
19 completeness of the reports, that prior to transporting a handgun
20 to a law enforcement agency in order to comply with subparagraph
21 (A), the person should give prior notice to the law enforcement
22 agency that he or she is doing so, and that in any event, the handgun
23 should be transported unloaded and in a locked container.

24 (iii) Any costs incurred by the department to implement this
25 paragraph shall be absorbed by the department within its existing
26 budget and the fees in the Dealers' Record of Sale Special Account
27 allocated for implementation of this subparagraph pursuant to
28 Section 12076.

29 (3) Where a person who is licensed as a collector pursuant to
30 Chapter 44 (commencing with Section 921) of Title 18 of the
31 United States Code and the regulations issued pursuant thereto,
32 whose licensed premises are within this state, acquires a handgun
33 that is a curio or relic, as defined in Section 478.11 of Title 27 of
34 the Code of Federal Regulations, outside of this state, takes actual
35 possession of that firearm outside of this state pursuant to the
36 provisions of subsection (j) of Section 923 of Title 18 of the United
37 States Code, as amended by Public Law 104-208, and transports
38 that firearm into this state, within five days of that licensed
39 collector transporting that firearm into this state, he or she shall

1 report to the department in a format prescribed by the department
2 his or her acquisition of that firearm.

3 (4) (A) It is the intent of the Legislature that a violation of
4 paragraph (2) or (3) shall not constitute a “continuing offense” and
5 the statute of limitations for commencing a prosecution for a
6 violation of paragraph (2) or (3) commences on the date that the
7 applicable grace period specified in paragraph (2) or (3) expires.

8 (B) Paragraphs (2) and (3) shall not apply to a person who
9 reports his or her ownership of a handgun after the applicable grace
10 period specified in paragraph (2) or (3) expires if evidence of that
11 violation arises only as the result of the person submitting the
12 report described in paragraph (2) or (3).

13 (g) (1) Except as provided in paragraph (2), (3), or (5), a
14 violation of this section is a misdemeanor.

15 (2) If any of the following circumstances apply, a violation of
16 this section is punishable by imprisonment ~~in the state prison~~
17 *pursuant to subdivision (h) of Section 1170* for two, three, or four
18 years.

19 (A) If the violation is of paragraph (1) of subdivision (a).

20 (B) If the defendant has a prior conviction of violating the
21 provisions, other than paragraph (9) of subdivision (a), of this
22 section or former Section 12100 of this code or Section 8101 of
23 the Welfare and Institutions Code.

24 (C) If the defendant has a prior conviction of violating any
25 offense specified in subdivision (b) of Section 12021.1 or of a
26 violation of Section 12020, 12220, or 12520, or of former Section
27 12560.

28 (D) If the defendant is in a prohibited class described in Section
29 12021 or 12021.1 of this code or Section 8100 or 8103 of the
30 Welfare and Institutions Code.

31 (E) A violation of this section by a person who actively
32 participates in a “criminal street gang” as defined in Section 186.22.

33 (F) A violation of subdivision (b) involving the delivery of any
34 firearm to a person who the dealer knows, or should know, is a
35 minor.

36 (3) If any of the following circumstances apply, a violation of
37 this section shall be punished by imprisonment in a county jail not
38 exceeding one year or ~~in the state prison~~ *pursuant to subdivision*
39 *(h) of Section 1170*, or by a fine not to exceed one thousand dollars
40 (\$1,000), or by both that fine and imprisonment.

1 (A) A violation of paragraph (2), (4), or (5) of subdivision (a).

2 (B) A violation of paragraph (3) of subdivision (a) involving
3 the sale, loan, or transfer of a handgun to a minor.

4 (C) A violation of subdivision (b) involving the delivery of a
5 handgun.

6 (D) A violation of paragraph (1), (3), (4), (5), or (6) of
7 subdivision (c) involving a pistol, revolver, or other firearm capable
8 of being concealed upon the person.

9 (E) A violation of subdivision (d) involving a handgun.

10 (F) A violation of subdivision (e).

11 (4) If both of the following circumstances apply, an additional
12 term of imprisonment ~~in the state prison pursuant to subdivision~~
13 ~~(h) of Section 1170~~ for one, two, or three years shall be imposed
14 in addition and consecutive to the sentence prescribed.

15 (A) A violation of paragraph (2) of subdivision (a) or subdivision
16 (b).

17 (B) The firearm transferred in violation of paragraph (2) of
18 subdivision (a) or subdivision (b) is used in the subsequent
19 commission of a felony for which a conviction is obtained and the
20 prescribed sentence is imposed.

21 (5) (A) A first violation of paragraph (9) of subdivision (a) is
22 an infraction punishable by a fine of fifty dollars (\$50).

23 (B) A second violation of paragraph (9) of subdivision (a) is an
24 infraction punishable by a fine of one hundred dollars (\$100).

25 (C) A third or subsequent violation of paragraph (9) of
26 subdivision (a) is a misdemeanor.

27 (D) For purposes of this paragraph each application to purchase
28 a handgun in violation of paragraph (9) of subdivision (a) shall be
29 deemed a separate offense.

30 *SEC. 515. Section 12076 of the Penal Code is amended to*
31 *read:*

32 12076. (a) (1) Before January 1, 1998, the Department of
33 Justice shall determine the method by which a dealer shall submit
34 firearm purchaser information to the department and the
35 information shall be in one of the following formats:

36 (A) Submission of the register described in Section 12077.

37 (B) Electronic or telephonic transfer of the information contained
38 in the register described in Section 12077.

39 (2) On or after January 1, 1998, electronic or telephonic transfer,
40 including voice or facsimile transmission, shall be the exclusive

1 means by which purchaser information is transmitted to the
2 department.

3 (3) On or after January 1, 2003, except as permitted by the
4 department, electronic transfer shall be the exclusive means by
5 which information is transmitted to the department. Telephonic
6 transfer shall not be permitted for information regarding sales of
7 any firearms.

8 (b) (1) Where the register is used, the purchaser of any firearm
9 shall be required to present clear evidence of his or her identity
10 and age, as defined in Section 12071, to the dealer, and the dealer
11 shall require him or her to sign his or her current legal name and
12 affix his or her residence address and date of birth to the register
13 in quadruplicate. The salesperson shall affix his or her signature
14 to the register in quadruplicate as a witness to the signature and
15 identification of the purchaser. Any person furnishing a fictitious
16 name or address or knowingly furnishing any incorrect information
17 or knowingly omitting any information required to be provided
18 for the register and any person violating any provision of this
19 section is guilty of a misdemeanor, provided however, that any
20 person who is prohibited from obtaining a firearm pursuant to
21 Section 12021 or 12021.1 of this code, or Section 8100 or 8103
22 of the Welfare and Institutions Code who knowingly furnishes a
23 fictitious name or address or knowingly furnishes any incorrect
24 information or knowingly omits any information required to be
25 provided for the register shall be punished by imprisonment in a
26 county jail not exceeding one year or imprisonment ~~in the state~~
27 ~~prison pursuant to subdivision (h) of Section 1170~~ for a term of 8,
28 12, or 18 months.

29 (2) The original of the register shall be retained by the dealer
30 in consecutive order. Each book of 50 originals shall become the
31 permanent register of transactions that shall be retained for not
32 less than three years from the date of the last transaction and shall
33 be available for the inspection of any peace officer, Department
34 of Justice employee designated by the Attorney General, or agent
35 of the federal Bureau of Alcohol, Tobacco, Firearms and
36 Explosives upon the presentation of proper identification, but no
37 information shall be compiled therefrom regarding the purchasers
38 or other transferees of firearms that are not pistols, revolvers, or
39 other firearms capable of being concealed upon the person.

1 (3) Two copies of the original sheet of the register, on the date
2 of the application to purchase, shall be placed in the mail, postage
3 prepaid, and properly addressed to the Department of Justice.

4 (4) If requested, a photocopy of the original shall be provided
5 to the purchaser by the dealer.

6 (5) If the transaction is a private party transfer conducted
7 pursuant to Section 12082, a photocopy of the original shall be
8 provided to the seller or purchaser by the dealer, upon request.
9 The dealer shall redact all of the purchaser's personal information,
10 as required pursuant to paragraph (1) of subdivision (b) and
11 paragraph (1) of subdivision (c) of Section 12077, from the seller's
12 copy, and the seller's personal information from the purchaser's
13 copy.

14 (c) (1) Where the electronic or telephonic transfer of applicant
15 information is used, the purchaser shall be required to present clear
16 evidence of his or her identity and age, as defined in Section 12071,
17 to the dealer, and the dealer shall require him or her to sign his or
18 her current legal name to the record of electronic or telephonic
19 transfer. The salesperson shall affix his or her signature to the
20 record of electronic or telephonic transfer as a witness to the
21 signature and identification of the purchaser. Any person furnishing
22 a fictitious name or address or knowingly furnishing any incorrect
23 information or knowingly omitting any information required to be
24 provided for the electronic or telephonic transfer and any person
25 violating any provision of this section is guilty of a misdemeanor,
26 provided however, that any person who is prohibited from
27 obtaining a firearm pursuant to Section 12021 or 12021.1 of this
28 code, or Section 8100 or 8103 of the Welfare and Institutions Code
29 who knowingly furnishes a fictitious name or address or knowingly
30 furnishes any incorrect information or knowingly omits any
31 information required to be provided for the register shall be
32 punished by imprisonment in a county jail not exceeding one year
33 or imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
34 Section 1170 for a term of 8, 12, or 18 months.

35 (2) The record of applicant information shall be transmitted to
36 the Department of Justice by electronic or telephonic transfer on
37 the date of the application to purchase.

38 (3) The original of each record of electronic or telephonic
39 transfer shall be retained by the dealer in consecutive order. Each
40 original shall become the permanent record of the transaction that

1 shall be retained for not less than three years from the date of the
2 last transaction and shall be provided for the inspection of any
3 peace officer, Department of Justice employee designated by the
4 Attorney General, or agent of the federal Bureau of Alcohol,
5 Tobacco, Firearms and Explosives upon the presentation of proper
6 identification, but no information shall be compiled therefrom
7 regarding the purchasers or other transferees of firearms that are
8 not pistols, revolvers, or other firearms capable of being concealed
9 upon the person.

10 (4) If requested, a copy of the record of electronic or telephonic
11 transfer shall be provided to the purchaser by the dealer.

12 (5) If the transaction is a private party transfer conducted
13 pursuant to Section 12082, a copy shall be provided to the seller
14 or purchaser by the dealer, upon request. The dealer shall redact
15 all of the purchaser's personal information, as required pursuant
16 to paragraph (1) of subdivision (b) and paragraph (1) of subdivision
17 (c) of Section 12077, from the seller's copy, and the seller's
18 personal information from the purchaser's copy.

19 (d) (1) The department shall examine its records, as well as
20 those records that it is authorized to request from the State
21 Department of Mental Health pursuant to Section 8104 of the
22 Welfare and Institutions Code, in order to determine if the
23 purchaser is a person described in subparagraph (A) of paragraph
24 (9) of subdivision (a) of Section 12072, or is prohibited by state
25 or federal law from possessing, receiving, owning, or purchasing
26 a firearm.

27 (2) To the extent that funding is available, the Department of
28 Justice may participate in the National Instant Criminal Background
29 Check System (NICS), as described in subsection (t) of Section
30 922 of Title 18 of the United States Code, and, if that participation
31 is implemented, shall notify the dealer and the chief of the police
32 department of the city or city and county in which the sale was
33 made, or if the sale was made in a district in which there is no
34 municipal police department, the sheriff of the county in which
35 the sale was made, that the purchaser is a person prohibited from
36 acquiring a firearm under federal law.

37 (3) If the department determines that the purchaser is prohibited
38 by state or federal law from possessing, receiving, owning, or
39 purchasing a firearm or is a person described in subparagraph (A)
40 of paragraph (9) of subdivision (a) of Section 12072, it shall

1 immediately notify the dealer and the chief of the police department
2 of the city or city and county in which the sale was made, or if the
3 sale was made in a district in which there is no municipal police
4 department, the sheriff of the county in which the sale was made,
5 of that fact.

6 (4) If the department determines that the copies of the register
7 submitted to it pursuant to paragraph (3) of subdivision (b) contain
8 any blank spaces or inaccurate, illegible, or incomplete information,
9 preventing identification of the purchaser or the pistol, revolver,
10 or other firearm to be purchased, or if any fee required pursuant
11 to subdivision (e) is not submitted by the dealer in conjunction
12 with submission of copies of the register, the department may
13 notify the dealer of that fact. Upon notification by the department,
14 the dealer shall submit corrected copies of the register to the
15 department, or shall submit any fee required pursuant to subdivision
16 (e), or both, as appropriate and, if notification by the department
17 is received by the dealer at any time prior to delivery of the firearm
18 to be purchased, the dealer shall withhold delivery until the
19 conclusion of the waiting period described in Sections 12071 and
20 12072.

21 (5) If the department determines that the information transmitted
22 to it pursuant to subdivision (c) contains inaccurate or incomplete
23 information preventing identification of the purchaser or the pistol,
24 revolver, or other firearm capable of being concealed upon the
25 person to be purchased, or if the fee required pursuant to
26 subdivision (e) is not transmitted by the dealer in conjunction with
27 transmission of the electronic or telephonic record, the department
28 may notify the dealer of that fact. Upon notification by the
29 department, the dealer shall transmit corrections to the record of
30 electronic or telephonic transfer to the department, or shall transmit
31 any fee required pursuant to subdivision (e), or both, as appropriate,
32 and if notification by the department is received by the dealer at
33 any time prior to delivery of the firearm to be purchased, the dealer
34 shall withhold delivery until the conclusion of the waiting period
35 described in Sections 12071 and 12072.

36 (e) The Department of Justice may require the dealer to charge
37 each firearm purchaser a fee not to exceed fourteen dollars (\$14),
38 except that the fee may be increased at a rate not to exceed any
39 increase in the California Consumer Price Index as compiled and

1 reported by the Department of Industrial Relations. The fee shall
2 be no more than is necessary to fund the following:

3 (1) (A) The department for the cost of furnishing this
4 information.

5 (B) The department for the cost of meeting its obligations under
6 paragraph (2) of subdivision (b) of Section 8100 of the Welfare
7 and Institutions Code.

8 (2) Local mental health facilities for state-mandated local costs
9 resulting from the reporting requirements imposed by Section 8103
10 of the Welfare and Institutions Code.

11 (3) The State Department of Mental Health for the costs resulting
12 from the requirements imposed by Section 8104 of the Welfare
13 and Institutions Code.

14 (4) Local mental hospitals, sanitariums, and institutions for
15 state-mandated local costs resulting from the reporting
16 requirements imposed by Section 8105 of the Welfare and
17 Institutions Code.

18 (5) Local law enforcement agencies for state-mandated local
19 costs resulting from the notification requirements set forth in
20 subdivision (a) of Section 6385 of the Family Code.

21 (6) Local law enforcement agencies for state-mandated local
22 costs resulting from the notification requirements set forth in
23 subdivision (c) of Section 8105 of the Welfare and Institutions
24 Code.

25 (7) For the actual costs associated with the electronic or
26 telephonic transfer of information pursuant to subdivision (c).

27 (8) The Department of Food and Agriculture for the costs
28 resulting from the notification provisions set forth in Section 5343.5
29 of the Food and Agricultural Code.

30 (9) The department for the costs associated with subparagraph
31 (D) of paragraph (2) of subdivision (f) of Section 12072.

32 (10) The department for the costs associated with funding
33 Department of Justice firearms-related regulatory and enforcement
34 activities related to the sale, purchase, loan, or transfer of firearms
35 pursuant to this chapter.

36 The fee established pursuant to this subdivision shall not exceed
37 the sum of the actual processing costs of the department, the
38 estimated reasonable costs of the local mental health facilities for
39 complying with the reporting requirements imposed by paragraph
40 (2) of this subdivision, the costs of the State Department of Mental

Health for complying with the requirements imposed by paragraph (3) of this subdivision, the estimated reasonable costs of local mental hospitals, sanitariums, and institutions for complying with the reporting requirements imposed by paragraph (4) of this subdivision, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (a) of Section 6385 of the Family Code, the estimated reasonable costs of local law enforcement agencies for complying with the notification requirements set forth in subdivision (c) of Section 8105 of the Welfare and Institutions Code imposed by paragraph (6) of this subdivision, the estimated reasonable costs of the Department of Food and Agriculture for the costs resulting from the notification provisions set forth in Section 5343.5 of the Food and Agricultural Code, the estimated reasonable costs of the department for the costs associated with subparagraph (D) of paragraph (2) of subdivision (f) of Section 12072, and the estimated reasonable costs of department firearms-related regulatory and enforcement activities related to the sale, purchase, loan, or transfer of firearms pursuant to this chapter.

(f) (1) The Department of Justice may charge a fee sufficient to reimburse it for each of the following but not to exceed fourteen dollars (\$14), except that the fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations:

(A) For the actual costs associated with the preparation, sale, processing, and filing of forms or reports required or utilized pursuant to Section 12078.

(B) For the actual processing costs associated with the submission of a Dealers' Record of Sale to the department.

(C) For the actual costs associated with the preparation, sale, processing, and filing of reports utilized pursuant to subdivision (l) of Section 12078 or paragraph (18) of subdivision (b) of Section 12071, or clause (i) of subparagraph (A) of paragraph (2) of subdivision (f) of Section 12072, or paragraph (3) of subdivision (f) of Section 12072.

(D) For the actual costs associated with the electronic or telephonic transfer of information pursuant to subdivision (c).

(2) If the department charges a fee pursuant to subparagraph (B) of paragraph (1) of this subdivision, it shall be charged in the

1 same amount to all categories of transaction that are within that
2 subparagraph.

3 (3) Any costs incurred by the Department of Justice to
4 implement this subdivision shall be reimbursed from fees collected
5 and charged pursuant to this subdivision. No fees shall be charged
6 to the dealer pursuant to subdivision (e) for implementing this
7 subdivision.

8 (g) All money received by the department pursuant to this
9 section shall be deposited in the Dealers' Record of Sale Special
10 Account of the General Fund, which is hereby created, to be
11 available, upon appropriation by the Legislature, for expenditure
12 by the department to offset the costs incurred pursuant to this
13 section, paragraph (1) and subparagraph (D) of paragraph (2) of
14 subdivision (f) of Section 12072, Sections 12083 and 12099,
15 subdivision (c) of Section 12131, Sections 12234, 12289, and
16 12289.5, and subdivisions (f) and (g) of Section 12305.

17 (h) Where the electronic or telephonic transfer of applicant
18 information is used, the department shall establish a system to be
19 used for the submission of the fees described in subdivision (e) to
20 the department.

21 (i) (1) Only one fee shall be charged pursuant to this section
22 for a single transaction on the same date for the sale of any number
23 of firearms that are not pistols, revolvers, or other firearms capable
24 of being concealed upon the person or for the taking of possession
25 of those firearms.

26 (2) In a single transaction on the same date for the delivery of
27 any number of firearms that are pistols, revolvers, or other firearms
28 capable of being concealed upon the person, the department shall
29 charge a reduced fee pursuant to this section for the second and
30 subsequent firearms that are part of that transaction.

31 (j) Only one fee shall be charged pursuant to this section for a
32 single transaction on the same date for taking title or possession
33 of any number of firearms pursuant to paragraph (18) of
34 subdivision (b) of Section 12071 or subdivision (c) or (i) of Section
35 12078.

36 (k) Whenever the Department of Justice acts pursuant to this
37 section as it pertains to firearms other than pistols, revolvers, or
38 other firearms capable of being concealed upon the person, the
39 department's acts or omissions shall be deemed to be discretionary
40 within the meaning of the California Tort Claims Act pursuant to

1 Division 3.6 (commencing with Section 810) of Title 1 of the
2 Government Code.

3 (l) As used in this section, the following definitions apply:

4 (1) "Purchaser" means the purchaser or transferee of a firearm
5 or a person being loaned a firearm.

6 (2) "Purchase" means the purchase, loan, or transfer of a firearm.

7 (3) "Sale" means the sale, loan, or transfer of a firearm.

8 (4) "Seller" means, if the transaction is being conducted pursuant
9 to Section 12082, the person selling, loaning, or transferring the
10 firearm.

11 *SEC. 516. Section 12090 of the Penal Code is amended to*
12 *read:*

13 12090. Any person who changes, alters, removes or obliterates
14 the name of the maker, model, manufacturer's number, or other
15 mark of identification, including any distinguishing number or
16 mark assigned by the Department of Justice on any pistol, revolver,
17 or any other firearm, without first having secured written
18 permission from the department to make such change, alteration
19 or removal shall be punished by imprisonment ~~in the state prison~~
20 *pursuant to subdivision (h) of Section 1170.*

21 *SEC. 517. Section 12101 of the Penal Code is amended to*
22 *read:*

23 12101. (a) (1) A minor shall not possess a pistol, revolver, or
24 other firearm capable of being concealed upon the person.

25 (2) Paragraph (1) shall not apply if one of the following
26 circumstances exists:

27 (A) The minor is accompanied by his or her parent or legal
28 guardian, and the minor is actively engaged in, or is in direct transit
29 to or from, a lawful, recreational sport, including, but not limited
30 to, competitive shooting, or agricultural, ranching, or hunting
31 activity, or a motion picture, television, or video production, or
32 entertainment or theatrical event, the nature of which involves this
33 use of a firearm.

34 (B) The minor is accompanied by a responsible adult, the minor
35 has the prior written consent of his or her parent or legal guardian,
36 and the minor is actively engaged in, or is in direct transit to or
37 from, a lawful, recreational sport, including, but not limited to,
38 competitive shooting, or agricultural, ranching, or hunting activity,
39 or a motion picture, television, or video production, or

1 entertainment or theatrical event, the nature of which involves the
2 use of a firearm.

3 (C) The minor is at least 16 years of age, the minor has the prior
4 written consent of his or her parent or legal guardian and the minor
5 is actively engaged in, or is in direct transit to or from, a lawful
6 recreational sport, including, but not limited to, competitive
7 shooting, or agricultural, ranching, or hunting activity, or a motion
8 picture, television, or video production, or entertainment or
9 theatrical event, the nature of which involves the use of a firearm.

10 (D) The minor has the prior written consent of his or her parent
11 or legal guardian, the minor is on lands owned or lawfully
12 possessed by his or her parent or legal guardian, and the minor is
13 actively engaged in, or is in direct transit to or from, a lawful,
14 recreational sport, including, but not limited to, competitive
15 shooting, or agricultural, ranching, or hunting activity, or a motion
16 picture, television, or video production, or entertainment or
17 theatrical event, the nature of which involves the use of a firearm.

18 (b) (1) A minor shall not possess live ammunition.

19 (2) Paragraph (1) shall not apply if one of the following
20 circumstances exists:

21 (A) The minor has the written consent of his or her parent or
22 legal guardian to possess live ammunition.

23 (B) The minor is accompanied by his or her parent or legal
24 guardian.

25 (C) The minor is actively engaged in, or is going to or from, a
26 lawful, recreational sport, including, but not limited to, competitive
27 shooting, or agricultural, ranching, or hunting activity, the nature
28 of which involves the use of a firearm.

29 (c) Every minor who violates this section shall be punished as
30 follows:

31 (1) By imprisonment ~~in the state prison~~ *pursuant to subdivision*
32 *(h) of Section 1170* or in a county jail if one of the following
33 applies:

34 (A) The minor has been found guilty previously of violating
35 this section.

36 (B) The minor has been found guilty previously of an offense
37 specified in subdivision (b) of Section 12021.1 or in Section 12020,
38 12220, 12520, or 12560.

39 (C) The minor has been found guilty of a violation of paragraph
40 (1) of subdivision (a).

1 (2) Violations of this section other than those violations specified
2 in paragraph (1) shall be punishable as a misdemeanor.

3 (d) In a proceeding to enforce this section brought pursuant to
4 Article 14 (commencing with Section 601) of Chapter 2 of Part 1
5 of the Welfare and Institutions Code, the court may require the
6 custodial parent or legal guardian of a minor who violates this
7 section to participate in classes on parenting education that meet
8 the requirements established in Section 16507.7 of the Welfare
9 and Institutions Code.

10 (e) As used in this section, “responsible adult” means a person
11 at least 21 years of age who is not prohibited by state or federal
12 law from possessing, receiving, owning, or purchasing a firearm.

13 (f) It is not the intent of the Legislature in enacting the
14 amendments to this section or to Section 12078 to expand or
15 narrow the application of current statutory or judicial authority as
16 to the rights of minors to be loaned or to possess live ammunition
17 or a firearm for the purpose of self-defense or the defense of others.

18 *SEC. 518. Section 12220 of the Penal Code is amended to*
19 *read:*

20 12220. (a) Any person, firm, or corporation, who within this
21 state possesses or knowingly transports a machinegun, except as
22 authorized by this chapter, is guilty of a public offense and upon
23 conviction thereof shall be punished by imprisonment ~~in the state~~
24 ~~prison pursuant to subdivision (h) of Section 1170~~, or by a fine not
25 to exceed ten thousand dollars (\$10,000), or by both ~~such~~ that fine
26 and imprisonment.

27 (b) Any person, firm, or corporation who within this state
28 intentionally converts a firearm into a machinegun, or who sells,
29 or offers for sale, or knowingly manufactures a machinegun, except
30 as authorized by this chapter, is punishable by imprisonment ~~in~~
31 ~~the state prison pursuant to subdivision (h) of Section 1170~~ for
32 four, six, or eight years.

33 *SEC. 519. Section 12280 of the Penal Code is amended to*
34 *read:*

35 12280. (a) (1) Any person who, within this state, manufactures
36 or causes to be manufactured, distributes, transports, or imports
37 into the state, keeps for sale, or offers or exposes for sale, or who
38 gives or lends any assault weapon or any .50 BMG rifle, except
39 as provided by this chapter, is guilty of a felony, and upon
40 conviction shall be punished by imprisonment ~~in the state prison~~

1 pursuant to subdivision (h) of Section 1170 for four, six, or eight
2 years.

3 (2) In addition and consecutive to the punishment imposed under
4 paragraph (1), any person who transfers, lends, sells, or gives any
5 assault weapon or any .50 BMG rifle to a minor in violation of
6 paragraph (1) shall receive an enhancement of one year *in a county*
7 *jail*.

8 (3) Except in the case of a first violation involving not more
9 than two firearms as provided in subdivisions (b) and (c), for
10 purposes of this section, if more than one assault weapon or .50
11 BMG rifle is involved in any violation of this section, there shall
12 be a distinct and separate offense for each.

13 (b) Any person who, within this state, possesses any assault
14 weapon, except as provided in this chapter, shall be punished by
15 imprisonment in a county jail for a period not exceeding one year,
16 or by imprisonment ~~in the state prison~~ pursuant to subdivision (h)
17 of Section 1170. However, a first violation of these provisions is
18 punishable by a fine not exceeding five hundred dollars (\$500) if
19 the person was found in possession of no more than two firearms
20 in compliance with subdivision (c) of Section 12285 and the person
21 meets all of the following conditions:

22 (1) The person proves that he or she lawfully possessed the
23 assault weapon prior to the date it was defined as an assault weapon
24 pursuant to Section 12276, 12276.1, or 12276.5.

25 (2) The person has not previously been convicted of a violation
26 of this section.

27 (3) The person was found to be in possession of the assault
28 weapon within one year following the end of the one-year
29 registration period established pursuant to subdivision (a) of
30 Section 12285.

31 (4) The person relinquished the firearm pursuant to Section
32 12288, in which case the assault weapon shall be destroyed
33 pursuant to Section 12028.

34 (c) Any person who, within this state, possesses any .50 BMG
35 rifle, except as provided in this chapter, shall be punished by a fine
36 of one thousand dollars (\$1,000), imprisonment in a county jail
37 for a period not to exceed one year, or by both that fine and
38 imprisonment. However, a first violation of these provisions is
39 punishable by a fine not exceeding five hundred dollars (\$500) if
40 the person was found in possession of no more than two firearms

1 in compliance with subdivision (a) of Section 12285 and the person
2 meets the conditions set forth in paragraphs (1), (2), and (3):

3 (1) The person proves that he or she lawfully possessed the .50
4 BMG rifle prior to January 1, 2005.

5 (2) The person has not previously been convicted of a violation
6 of this section.

7 (3) The person was found to be in possession of the .50 BMG
8 rifle within one year following the end of the .50 BMG rifle
9 registration period established pursuant to subdivision (a) of
10 Section 12285.

11 (4) Firearms seized pursuant to this subdivision from persons
12 who meet all of the conditions set forth in paragraphs (1), (2), and
13 (3) shall be returned unless the court finds in the interest of public
14 safety, after notice and hearing, that the .50 BMG rifle should be
15 destroyed pursuant to Section 12028. Firearms seized from persons
16 who do not meet the conditions set forth in paragraphs (1), (2),
17 and (3) shall be destroyed pursuant to Section 12028.

18 (d) Notwithstanding Section 654 or any other provision of law,
19 any person who commits another crime while violating this section
20 may receive an additional, consecutive punishment of one year
21 for violating this section in addition and consecutive to the
22 punishment, including enhancements, which is prescribed for the
23 other crime.

24 (e) Subdivisions (a), (b), and (c) shall not apply to the sale to,
25 purchase by, importation of, or possession of assault weapons or
26 a .50 BMG rifle by the Department of Justice, police departments,
27 sheriffs' offices, marshals' offices, the Department of Corrections
28 and Rehabilitation, the Department of the California Highway
29 Patrol, district attorneys' offices, Department of Fish and Game,
30 Department of Parks and Recreation, or the military or naval forces
31 of this state or of the United States, or any federal law enforcement
32 agency for use in the discharge of their official duties.

33 (f) (1) Subdivisions (b) and (c) shall not prohibit the possession
34 or use of assault weapons or a .50 BMG rifle by sworn peace
35 officer members of those agencies specified in subdivision (e) for
36 law enforcement purposes, whether on or off duty.

37 (2) Subdivisions (a), (b), and (c) shall not prohibit the delivery,
38 transfer, or sale of an assault weapon or a .50 BMG rifle to, or the
39 possession of an assault weapon or a .50 BMG rifle by, a sworn
40 peace officer member of an agency specified in subdivision (e) if

1 the peace officer is authorized by his or her employer to possess
2 or receive the assault weapon or the .50 BMG rifle. Required
3 authorization is defined as verifiable written certification from the
4 head of the agency, identifying the recipient or possessor of the
5 assault weapon as a peace officer and authorizing him or her to
6 receive or possess the specific assault weapon. For this exemption
7 to apply, in the case of a peace officer who possesses or receives
8 the assault weapon prior to January 1, 2002, the officer shall
9 register the assault weapon pursuant to Section 12285 on or before
10 April 1, 2002, and in the case of a peace officer who possesses or
11 receives the assault weapon on or after January 1, 2002, the officer
12 shall register the assault weapon pursuant to Section 12285 not
13 later than 90 days after possession or receipt. In the case of a peace
14 officer who possesses or receives a .50 BMG rifle on or before
15 January 1, 2005, the officer shall register the .50 BMG rifle on or
16 before April 30, 2006. In the case of a peace officer who possesses
17 or receives a .50 BMG rifle after January 1, 2005, the officer shall
18 register the .50 BMG rifle not later than one year after possession
19 or receipt. The peace officer must include with the registration, a
20 copy of the authorization required pursuant to this paragraph.

21 (3) Nothing in this section shall be construed to limit or prohibit
22 the delivery, transfer, or sale of an assault weapon or a .50 BMG
23 rifle to, or the possession of an assault weapon or a .50 BMG rifle
24 by, a member of a federal law enforcement agency provided that
25 person is authorized by the employing agency to possess the assault
26 weapon or .50 BMG rifle.

27 (g) Subdivision (b) shall not apply to the possession of an assault
28 weapon during the 90-day period immediately after the date it was
29 specified as an assault weapon pursuant to Section 12276.5, or
30 during the one-year period after the date it was defined as an assault
31 weapon pursuant to Section 12276.1, if all of the following are
32 applicable:

33 (1) The person is eligible under this chapter to register the
34 particular assault weapon.

35 (2) The person lawfully possessed the particular assault weapon
36 prior to the date it was specified as an assault weapon pursuant to
37 Section 12276.5, or prior to the date it was defined as an assault
38 weapon pursuant to Section 12276.1.

39 (3) The person is otherwise in compliance with this chapter.

1 (h) Subdivisions (a), (b), and (c) shall not apply to the
2 manufacture by persons who are issued permits pursuant to Section
3 12287 of assault weapons or .50 BMG rifles for sale to the
4 following:

5 (1) Exempt entities listed in subdivision (e).

6 (2) Entities and persons who have been issued permits pursuant
7 to Section 12286 or 12287.

8 (3) Entities outside the state who have, in effect, a federal
9 firearms dealer's license solely for the purpose of distribution to
10 an entity listed in paragraphs (4) to (6), inclusive.

11 (4) Federal military and law enforcement agencies.

12 (5) Law enforcement and military agencies of other states.

13 (6) Foreign governments and agencies approved by the United
14 States State Department.

15 (i) Subdivision (a) shall not apply to a person who is the executor
16 or administrator of an estate that includes an assault weapon or a
17 .50 BMG rifle registered under Section 12285 or that was possessed
18 pursuant to paragraph (1) of subdivision (f) that is disposed of as
19 authorized by the probate court, if the disposition is otherwise
20 permitted by this chapter.

21 (j) Subdivisions (b) and (c) shall not apply to a person who is
22 the executor or administrator of an estate that includes an assault
23 weapon or a .50 BMG rifle registered under Section 12285 or that
24 was possessed pursuant to paragraph (1) of subdivision (f) if the
25 assault weapon or .50 BMG rifle is possessed at a place set forth
26 in paragraph (1) of subdivision (c) of Section 12285 or as
27 authorized by the probate court.

28 (k) Subdivision (a) shall not apply to either of the following:

29 (1) A person who lawfully possesses and has registered an
30 assault weapon or .50 BMG rifle pursuant to this chapter who lends
31 that assault weapon or .50 BMG rifle to another if all the following
32 apply:

33 (A) The person to whom the assault weapon or .50 BMG rifle
34 is lent is 18 years of age or over and is not prohibited by state or
35 federal law from possessing, receiving, owning, or purchasing a
36 firearm.

37 (B) The person to whom the assault weapon or .50 BMG rifle
38 is lent remains in the presence of the registered possessor of the
39 assault weapon or .50 BMG rifle.

1 (C) The assault weapon or .50 BMG rifle is possessed at any
2 of the following locations:

3 (i) While on a target range that holds a regulatory or business
4 license for the purpose of practicing shooting at that target range.

5 (ii) While on the premises of a target range of a public or private
6 club or organization organized for the purpose of practicing
7 shooting at targets.

8 (iii) While attending any exhibition, display, or educational
9 project that is about firearms and that is sponsored by, conducted
10 under the auspices of, or approved by a law enforcement agency
11 or a nationally or state recognized entity that fosters proficiency
12 in, or promotes education about, firearms.

13 (2) The return of an assault weapon or .50 BMG rifle to the
14 registered possessor, or the lawful possessor, which is lent by the
15 same pursuant to paragraph (1).

16 (l) Subdivisions (b) and (c) shall not apply to the possession of
17 an assault weapon or .50 BMG rifle by a person to whom an assault
18 weapon or .50 BMG rifle is lent pursuant to subdivision (k).

19 (m) Subdivisions (a), (b), and (c) shall not apply to the
20 possession and importation of an assault weapon or a .50 BMG
21 rifle into this state by a nonresident if all of the following
22 conditions are met:

23 (1) The person is attending or going directly to or coming
24 directly from an organized competitive match or league competition
25 that involves the use of an assault weapon or a .50 BMG rifle.

26 (2) The competition or match is conducted on the premises of
27 one of the following:

28 (A) A target range that holds a regulatory or business license
29 for the purpose of practicing shooting at that target range.

30 (B) A target range of a public or private club or organization
31 that is organized for the purpose of practicing shooting at targets.

32 (3) The match or competition is sponsored by, conducted under
33 the auspices of, or approved by, a law enforcement agency or a
34 nationally or state recognized entity that fosters proficiency in, or
35 promotes education about, firearms.

36 (4) The assault weapon or .50 BMG rifle is transported in
37 accordance with Section 12026.1 or 12026.2.

38 (5) The person is 18 years of age or over and is not in a class
39 of persons prohibited from possessing firearms by virtue of Section

1 12021 or 12021.1 of this code or Section 8100 or 8103 of the
2 Welfare and Institutions Code.

3 (n) Subdivisions (b) and (c) shall not apply to any of the
4 following persons:

5 (1) A person acting in accordance with Section 12286 or 12287.

6 (2) A person who has a permit to possess an assault weapon or
7 a .50 BMG rifle issued pursuant to Section 12286 or 12287 when
8 he or she is acting in accordance with Section 12285, 12286, or
9 12287.

10 (o) Subdivisions (a), (b), and (c) shall not apply to any of the
11 following persons:

12 (1) A person acting in accordance with Section 12285.

13 (2) A person acting in accordance with Section 12286, 12287,
14 or 12290.

15 (p) Subdivisions (b) and (c) shall not apply to the registered
16 owner of an assault weapon or a .50 BMG rifle possessing that
17 firearm in accordance with subdivision (c) of Section 12285.

18 (q) Subdivision (a) shall not apply to the importation into this
19 state of an assault weapon or a .50 BMG rifle by the registered
20 owner of that assault weapon or a .50 BMG rifle if it is in
21 accordance with the provisions of subdivision (c) of Section 12285.

22 (r) Subdivision (a) shall not apply during the first 180 days of
23 the 2005 calendar year to the importation into this state of a .50
24 BMG rifle by a person who lawfully possessed that .50 BMG rifle
25 in this state prior to January 1, 2005.

26 (s) Subdivision (c) shall not apply to the possession of a .50
27 BMG rifle that is not defined or specified as an assault weapon
28 pursuant to this chapter, by any person prior to May 1, 2006, if all
29 of the following are applicable:

30 (1) The person is eligible under this chapter to register that .50
31 BMG rifle.

32 (2) The person lawfully possessed the .50 BMG rifle prior to
33 January 1, 2005.

34 (3) The person is otherwise in compliance with this chapter.

35 (t) Subdivisions (a), (b), and (c) shall not apply to the sale of
36 assault weapons or .50 BMG rifles by persons who are issued
37 permits pursuant to Section 12287 to any of the following:

38 (1) Exempt entities listed in subdivision (e).

39 (2) Entities and persons who have been issued permits pursuant
40 to Section 12286 or 12287.

1 (3) Federal military and law enforcement agencies.

2 (4) Law enforcement and military agencies of other states.

3 (5) Foreign governments and agencies approved by the United
4 States State Department.

5 (6) Officers described in subdivision (f) who are authorized to
6 possess assault weapons or .50 BMG rifles pursuant to subdivision
7 (f).

8 (u) As used in this chapter, the date a firearm is an assault
9 weapon is the earliest of the following:

10 (1) The effective date of an amendment to Section 12276 that
11 adds the designation of the specified firearm.

12 (2) The effective date of the list promulgated pursuant to Section
13 12276.5 that adds or changes the designation of the specified
14 firearm.

15 (3) The operative date of Section 12276.1, as specified in
16 subdivision (d) of that section.

17 *SEC. 520. Section 12281 of the Penal Code is amended to*
18 *read:*

19 12281. (a) Any person who, or firm, company, or corporation
20 that, operated a retail or other commercial firm, company, or
21 corporation, and manufactured, distributed, transported, imported,
22 possessed, possessed for sale, offered for sale, or transferred, for
23 commercial purpose, an SKS rifle in California between January
24 1, 1992, and December 19, 1997, shall be immune from criminal
25 prosecution under Section 12280. The immunity provided in this
26 subdivision shall apply retroactively to any person who, or firm,
27 company, or corporation that, is or was charged by complaint or
28 indictment with a violation of Section 12280 for conduct related
29 to an SKS rifle, whether or not the case of that person, firm,
30 company, or corporation is final.

31 (b) Any person who possessed, gave, loaned, or transferred an
32 SKS rifle in California between January 1, 1992, and December
33 19, 1997, shall be immune from criminal prosecution under Section
34 12280. The immunity provided in this subdivision shall apply
35 retroactively to any person who was charged by complaint or
36 indictment with a violation of Section 12280 for conduct related
37 to an SKS rifle, whether or not the case of that person is final.

38 (c) Any SKS rifle in the possession of any person who, or firm,
39 company, or corporation that, is described in subdivision (a) or

1 (b), shall not be subject to seizure by law enforcement for violation
2 of Section 12280 prior to January 1, 2000.

3 (d) Any person, firm, company, or corporation, convicted under
4 Section 12280 for conduct relating to an SKS rifle, shall be
5 permitted to withdraw his or her plea of guilty or nolo contendere,
6 or to reopen his or her case and assert the immunities provided in
7 this section, if the court determines that the allowance of the
8 immunity is in the interests of justice. The court shall interpret this
9 section liberally to the benefit of the defendant.

10 (e) The Department of Justice shall notify all district attorneys
11 on or before January 31, 1999, of the provisions of this section.
12 The department shall identify all criminal prosecutions in the state
13 for conduct related to SKS rifles within 90 days of the effective
14 date of this section. In all cases so identified by the Attorney
15 General, the district attorneys shall inform defense counsel, or the
16 defendant if the defendant is in propria persona, in writing, of the
17 provisions of this section within 120 days of the effective date of
18 this section.

19 (f) (1) Any person, firm, company, or corporation that is in
20 possession of an SKS rifle shall do one of the following on or
21 before January 1, 2000:

22 (A) Relinquish the SKS rifle to the Department of Justice
23 pursuant to subdivision (h).

24 (B) Relinquish the SKS rifle to a law enforcement agency
25 pursuant to Section 12288.

26 (C) Dispose of the SKS rifle as permitted by Section 12285.

27 (2) Any person who has obtained title to an SKS rifle by bequest
28 or intestate succession shall be required to comply with
29 subparagraph (A) or (B) of paragraph (1) of this subdivision unless
30 he or she otherwise complies with paragraph (1) of subdivision
31 (b) of Section 12285.

32 (3) Any SKS rifle relinquished to the department pursuant to
33 this subdivision shall be in a manner prescribed by the department.

34 (4) The department shall conduct a public education and
35 notification program as described in Section 12289, commencing
36 no later than January 1, 1999.

37 (g) Any person who complies with subdivision (f) shall be
38 exempt from the prohibitions set forth in subdivision (a) or (b) of
39 Section 12280 for those acts by that person associated with
40 complying with the requirements of subdivision (f).

(h) (1) The department shall purchase any SKS rifle relinquished pursuant to subdivision (f) from funds appropriated for this purpose by the act amending this section in the 1997–98 Regular Session of the Legislature or by subsequent budget acts or other legislation. The department shall adopt regulations for this purchase program that include, but are not limited to, the manner of delivery, the reimbursement to be paid, and the manner in which persons shall be informed of the state purchase program.

(2) Any person who relinquished possession of an SKS rifle to a law enforcement agency pursuant to Section 12288 prior to the effective date of the purchase program set forth in paragraph (1) shall be eligible to be reimbursed from the purchase program. The procedures for reimbursement pursuant to this paragraph shall be part of the regulations adopted by the department pursuant to paragraph (1).

(i) Notwithstanding paragraph (11) of subdivision (a) of Section 12276, an “SKS rifle” under this section means all SKS rifles commonly referred to as “SKS Sporter” versions, manufactured to accept a detachable AK-47 magazine and imported into this state and sold by a licensed gun dealer, or otherwise lawfully possessed in this state by a resident of this state who is not a licensed gun dealer, between January 1, 1992, and December 19, 1997.

(j) Failure to comply with subdivision (f) is a public offense punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or in a county jail, not exceeding one year.

(k) In addition to the regulations required pursuant to subdivision (h), emergency regulations for the purchase program described in subdivision (h) shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 521. Section 12303.3 of the Penal Code is amended to read:

12303.3. Every person who possesses, explodes, ignites, or attempts to explode or ignite any destructive device or any explosive with intent to injure, intimidate, or terrify any person, or with intent to wrongfully injure or destroy any property, is guilty of a felony, and shall be punished by imprisonment ~~in the state~~

1 ~~prison pursuant to subdivision (h) of Section 1170~~ for a period of
2 three, five, or seven years.

3 *SEC. 522. Section 12303.6 of the Penal Code is amended to*
4 *read:*

5 12303.6. Any person, firm, or corporation who, within this
6 state, sells, offers for sale, or knowingly transports any destructive
7 device, other than fixed ammunition of a caliber greater than .60
8 caliber, except as provided by this chapter, is guilty of a felony
9 and is punishable by imprisonment ~~in the state prison pursuant to~~
10 *subdivision (h) of Section 1170* for two, three or four years.

11 *SEC. 523. Section 12304 of the Penal Code is amended to*
12 *read:*

13 12304. Any person, firm or corporation who, within this state,
14 sells, offers for sale, possesses or knowingly transports any fixed
15 ammunition of a caliber greater than .60 caliber, except as provided
16 in this chapter, is guilty of a public offense and upon conviction
17 thereof shall be punished by imprisonment in the county jail for a
18 term not to exceed six months or by a fine not to exceed one
19 thousand dollars (\$1,000), or by both ~~such~~ *that* fine and
20 imprisonment.

21 A second or subsequent conviction shall be punished by
22 imprisonment in the county jail for a term not to exceed one year,
23 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
24 *of Section 1170*, or by a fine not to exceed three thousand dollars
25 (\$3,000), or by both ~~such~~ *that* fine and imprisonment.

26 *SEC. 524. Section 12312 of the Penal Code is amended to*
27 *read:*

28 12312. Every person who possesses any substance, material,
29 or any combination of substances or materials, with the intent to
30 make any destructive device or any explosive without first
31 obtaining a valid permit to make such destructive device or
32 explosive, is guilty of a felony, and is punishable by imprisonment
33 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
34 two, three, or four years.

35 *SEC. 525. Section 12320 of the Penal Code is amended to*
36 *read:*

37 12320. Any person, firm, or corporation who, within this state
38 knowingly possesses any handgun ammunition designed primarily
39 to penetrate metal or armor is guilty of a public offense and upon
40 conviction thereof shall be punished by imprisonment ~~in the state~~

1 ~~prison pursuant to subdivision (h) of Section 1170~~, or in the county
2 jail for a term not to exceed one year, or by a fine not to exceed
3 five thousand dollars (\$5,000), or by both ~~such~~ *that* fine and
4 imprisonment.

5 *SEC. 526. Section 12355 of the Penal Code is amended to*
6 *read:*

7 12355. (a) Except as provided in Chapter 2.5 (commencing
8 with Section 12301), any person who assembles, maintains, places,
9 or causes to be placed a boobytrap device as described in
10 subdivision (c) is guilty of a felony punishable by imprisonment
11 ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for
12 two, three, or five years.

13 (b) Possession of any device with the intent to use the device
14 as a boobytrap is punishable by imprisonment ~~in state prison~~
15 *pursuant to subdivision (h) of Section 1170*, or in a county jail not
16 exceeding one year, or by a fine not exceeding five thousand dollars
17 (\$5,000), or by both that fine and imprisonment.

18 (c) For purposes of this section, “boobytrap” means any
19 concealed or camouflaged device designed to cause great bodily
20 injury when triggered by an action of any unsuspecting person
21 coming across the device. Boobytraps may include, but are not
22 limited to, guns, ammunition, or explosive devices attached to trip
23 wires or other triggering mechanisms, sharpened stakes, and lines
24 or wire with hooks attached.

25 *SEC. 527. Section 12370 of the Penal Code is amended to*
26 *read:*

27 12370. (a) A person who has been convicted of a violent
28 felony, as defined in subdivision (c) of Section 667.5, under the
29 laws of the United States, the State of California, or any other state,
30 government, or country, who purchases, owns, or possesses body
31 armor, as defined in subdivision (f), except as authorized under
32 subdivision (b), is guilty of a felony, punishable by imprisonment
33 ~~in a state prison pursuant to subdivision (h) of Section 1170~~ for 16
34 months, or two or three years.

35 (b) A person whose employment, livelihood, or safety is
36 dependent on the ability to legally possess and use body armor,
37 who is subject to the prohibition imposed by subdivision (a) due
38 to a prior violent felony conviction, may file a petition with the
39 chief of police or county sheriff of the jurisdiction in which he or
40 she seeks to possess and use the body armor for an exception to

1 this prohibition. The chief of police or sheriff may reduce or
2 eliminate the prohibition, impose conditions on reduction or
3 elimination of the prohibition, or otherwise grant relief from the
4 prohibition as he or she deems appropriate, based on the following:

5 (1) A finding that the petitioner is likely to use body armor in
6 a safe and lawful manner.

7 (2) A finding that the petitioner has a reasonable need for this
8 type of protection under the circumstances.

9 In making its decision, the chief of police or sheriff shall consider
10 the petitioner's continued employment, the interests of justice, any
11 relevant evidence, and the totality of the circumstances. It is the
12 intent of the Legislature that law enforcement officials exercise
13 broad discretion in fashioning appropriate relief under this
14 paragraph in cases in which relief is warranted. However, this
15 paragraph may not be construed to require law enforcement
16 officials to grant relief to any particular petitioner. Relief from this
17 prohibition does not relieve any other person or entity from any
18 liability that might otherwise be imposed.

19 (c) The chief of police or sheriff shall require, as a condition of
20 granting an exception under subdivision (b), that the petitioner
21 agree to maintain on his or her person a certified copy of the law
22 enforcement official's permission to possess and use body armor,
23 including any conditions or limitations.

24 (d) Law enforcement officials who enforce the prohibition
25 specified in subdivision (a) against a person who has been granted
26 relief pursuant to subdivision (b), shall be immune from any
27 liability for false arrest arising from the enforcement of this
28 subdivision unless the person has in his or her possession a certified
29 copy of the permission granting the person relief from the
30 prohibition, as required by subdivision (c). This immunity from
31 liability does not relieve any person or entity from any other
32 liability that might otherwise be imposed.

33 (e) For purposes of this section only, "violent felony" refers to
34 the specific crimes listed in subdivision (c) of Section 667.5, and
35 to crimes defined under the applicable laws of the United States
36 or any other state, government, or country that are reasonably
37 equivalent to the crimes listed in subdivision (c) of Section 667.5.

38 (f) For purposes of this section, "body armor" means any
39 bullet-resistant material intended to provide ballistic and trauma
40 protection for the person wearing the body armor.

1 *SEC. 528. Section 12403.7 of the Penal Code is amended to*
2 *read:*

3 12403.7. Notwithstanding any other law, any person may
4 purchase, possess, or use tear gas and tear gas weapons for the
5 projection or release of tear gas if the tear gas and tear gas weapons
6 are used solely for self-defense purposes, subject to the following
7 requirements:

8 (a) No person convicted of a felony or any crime involving an
9 assault under the laws of the United States, the State of California,
10 or any other state, government, or country or convicted of misuse
11 of tear gas under subdivision (g) shall purchase, possess, or use
12 tear gas or tear gas weapons.

13 (b) No person who is addicted to any narcotic drug shall
14 purchase, possess, or use tear gas or tear gas weapons.

15 (c) No person shall sell or furnish any tear gas or tear gas
16 weapon to a minor.

17 (d) No person who is a minor shall purchase, possess, or use
18 tear gas or tear gas weapons.

19 (e) (1) No person shall purchase, possess, or use any tear gas
20 weapon that expels a projectile, or that expels the tear gas by any
21 method other than an aerosol spray, or that contains more than 2.5
22 ounces net weight of aerosol spray.

23 (2) Every tear gas container and tear gas weapon that may be
24 lawfully purchased, possessed, and used pursuant to this section
25 shall have a label that states: "WARNING: The use of this
26 substance or device for any purpose other than self-defense is a
27 crime under the law. The contents are dangerous—use with care."

28 (3) After January 1, 1984, every tear gas container and tear gas
29 weapon that may be lawfully purchased, possessed, and used
30 pursuant to this section shall have a label that discloses the date
31 on which the useful life of the tear gas weapon expires.

32 (4) Every tear gas container and tear gas weapon that may be
33 lawfully purchased pursuant to this section shall be accompanied
34 at the time of purchase by printed instructions for use.

35 (f) Effective March 1, 1994, every tear gas container and tear
36 gas weapon that may be lawfully purchased, possessed, and used
37 pursuant to this section shall be accompanied by an insert including
38 directions for use, first aid information, safety and storage
39 information, and explanation of the legal ramifications of improper
40 use of the tear gas container or tear gas product.

(g) Any person who uses tear gas or tear gas weapons except in self-defense is guilty of a public offense and is punishable by imprisonment ~~in a state prison pursuant to subdivision (h) of Section 1170~~ for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment, except that, if the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of his or her official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment ~~in a state prison pursuant to subdivision (h) of Section 1170~~ for 16 months or two or three years or by a fine of one thousand dollars (\$1,000), or by both the fine and imprisonment.

SEC. 529. *Section 12422 of the Penal Code is amended to read:*

12422. Any person who changes, alters, removes or obliterates the name of the manufacturer, the serial number or any other mark of identification on any tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ or by a fine of not more than two thousand dollars (\$2,000) or by both.

Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same.

SEC. 530. *Section 12520 of the Penal Code is amended to read:*

12520. Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ or by a fine not to exceed ten thousand dollars (\$10,000) or by both.

SEC. 531. *Section 18715 of the Penal Code is amended to read:*

18715. (a) Every person who recklessly or maliciously has in possession any destructive device or any explosive in any of the following places is guilty of a felony:

- (1) On a public street or highway.

(2) In or near any theater, hall, school, college, church, hotel, or other public building.

(3) In or near any private habitation.

(4) In, on, or near any aircraft, railway passenger train, car, cable road, cable car, or vessel engaged in carrying passengers for hire.

(5) In, on, or near any other public place ordinarily passed by human beings.

(b) An offense under subdivision (a) is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for a period of two, four, or six years.

SEC. 532. Section 18720 of the Penal Code is amended to read:

18720. Every person who possesses any substance, material, or any combination of substances or materials, with the intent to make any destructive device or any explosive without first obtaining a valid permit to make that destructive device or explosive, is guilty of a felony, and is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for two, three, or four years.

SEC. 533. Section 18725 of the Penal Code is amended to read:

18725. Every person who willfully does any of the following is guilty of a felony and is punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 for two, four, or six years:

(a) Carries any destructive device or any explosive on any vessel, aircraft, car, or other vehicle that transports passengers for hire.

(b) While on board any vessel, aircraft, car, or other vehicle that transports passengers for hire, places or carries any destructive device or any explosive in any hand baggage, roll, or other container.

(c) Places any destructive device or any explosive in any baggage that is later checked with any common carrier.

SEC. 534. Section 18730 of the Penal Code is amended to read:

18730. Except as provided by this chapter, any person, firm, or corporation who, within this state, sells, offers for sale, or knowingly transports any destructive device, other than fixed

1 ammunition of a caliber greater than .60 caliber, is guilty of a
2 felony and is punishable by imprisonment ~~in the state prison~~
3 *pursuant to subdivision (h) of Section 1170* for two, three, or four
4 years.

5 *SEC. 535. Section 18735 of the Penal Code is amended to*
6 *read:*

7 18735. (a) Except as provided by this chapter, any person,
8 firm, or corporation who, within this state, sells, offers for sale,
9 possesses or knowingly transports any fixed ammunition of a
10 caliber greater than .60 caliber is guilty of a public offense.

11 (b) Upon conviction of an offense under subdivision (a), a
12 person, firm, or corporation shall be punished by imprisonment in
13 the county jail for a term not to exceed six months or by a fine not
14 to exceed one thousand dollars (\$1,000), or by both this fine and
15 imprisonment.

16 (c) A second or subsequent conviction shall be punished by
17 imprisonment in the county jail for a term not to exceed one year,
18 or by imprisonment ~~in the state prison pursuant to subdivision (h)~~
19 *of Section 1170*, or by a fine not to exceed three thousand dollars
20 (\$3,000), or by both this fine and imprisonment.

21 *SEC. 536. Section 18740 of the Penal Code is amended to*
22 *read:*

23 18740. Every person who possesses, explodes, ignites, or
24 attempts to explode or ignite any destructive device or any
25 explosive with intent to injure, intimidate, or terrify any person,
26 or with intent to wrongfully injure or destroy any property, is guilty
27 of a felony, and shall be punished by imprisonment ~~in the state~~
28 ~~prison pursuant to subdivision (h) of Section 1170~~ for a period of
29 three, five, or seven years.

30 *SEC. 537. Section 20110 of the Penal Code is amended to*
31 *read:*

32 20110. (a) Except as provided in Chapter 1 (commencing with
33 Section 18710) of Division 5 of Title 2, any person who assembles,
34 maintains, places, or causes to be placed a boobytrap device is
35 guilty of a felony punishable by imprisonment ~~in the state prison~~
36 *a county jail* for two, three, or five years.

37 (b) Possession of any device with the intent to use the device
38 as a boobytrap is punishable by imprisonment ~~in state prison~~
39 *pursuant to subdivision (h) of Section 1170*, or in a county jail not

1 exceeding one year, or by a fine not exceeding five thousand dollars
2 (\$5,000), or by both that fine and imprisonment.

3 *SEC. 538. Section 22810 of the Penal Code is amended to*
4 *read:*

5 22810. Notwithstanding any other provision of law, any person
6 may purchase, possess, or use tear gas or any tear gas weapon for
7 the projection or release of tear gas if the tear gas or tear gas
8 weapon is used solely for self-defense purposes, subject to the
9 following requirements:

10 (a) No person convicted of a felony or any crime involving an
11 assault under the laws of the United States, the State of California,
12 or any other state, government, or country, or convicted of misuse
13 of tear gas under subdivision (g), shall purchase, possess, or use
14 tear gas or any tear gas weapon.

15 (b) No person addicted to any narcotic drug shall purchase,
16 possess, or use tear gas or any tear gas weapon.

17 (c) No person shall sell or furnish any tear gas or tear gas
18 weapon to a minor.

19 (d) No minor shall purchase, possess, or use tear gas or any tear
20 gas weapon.

21 (e) (1) No person shall purchase, possess, or use any tear gas
22 weapon that expels a projectile, or that expels the tear gas by any
23 method other than an aerosol spray, or that contains more than 2.5
24 ounces net weight of aerosol spray.

25 (2) Every tear gas container and tear gas weapon that may be
26 lawfully purchased, possessed, and used pursuant to this section
27 shall have a label that states: "WARNING: The use of this
28 substance or device for any purpose other than self-defense is a
29 crime under the law. The contents are dangerous — use with care."

30 (3) After January 1, 1984, every tear gas container and tear gas
31 weapon that may be lawfully purchased, possessed, and used
32 pursuant to this section shall have a label that discloses the date
33 on which the useful life of the tear gas weapon expires.

34 (4) Every tear gas container and tear gas weapon that may be
35 lawfully purchased pursuant to this section shall be accompanied
36 at the time of purchase by printed instructions for use.

37 (f) Effective March 1, 1994, every tear gas container and tear
38 gas weapon that may be lawfully purchased, possessed, and used
39 pursuant to this section shall be accompanied by an insert including
40 directions for use, first aid information, safety and storage

information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

(g) (1) Except as provided in paragraph (2), any person who uses tear gas or any tear gas weapon except in self-defense is guilty of a public offense and is punishable by imprisonment ~~in a state prison~~ pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000), or by both the fine and imprisonment.

(2) If the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of official duties and the person committing the offense knows or reasonably should know that the victim is a peace officer, the offense is punishable by imprisonment ~~in a state prison~~ pursuant to subdivision (h) of Section 1170 for 16 months or two or three years or by a fine of one thousand dollars (\$1,000), or by both the fine and imprisonment.

SEC. 539. Section 22910 of the Penal Code is amended to read:

22910. (a) Any person who changes, alters, removes, or obliterates the name of the manufacturer, the serial number, or any other mark of identification on any tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 or by a fine of not more than two thousand dollars (\$2,000), or by both that fine and imprisonment.

(b) Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same.

SEC. 540. Section 23900 of the Penal Code is amended to read:

23900. Any person who changes, alters, removes, or obliterates the name of the maker, model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Justice, on any pistol, revolver, or any other firearm, without first having secured written permission from the department to make that change, alteration, or removal shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170.

1 *SEC. 541. Section 25110 of the Penal Code is amended to*
2 *read:*

3 25110. (a) Criminal storage of a firearm in the first degree is
4 punishable by imprisonment ~~in the state prison pursuant to~~
5 *subdivision (h) of Section 1170* for 16 months, or two or three
6 years, by a fine not exceeding ten thousand dollars (\$10,000), or
7 by both that imprisonment and fine; or by imprisonment in a county
8 jail not exceeding one year, by a fine not exceeding one thousand
9 dollars (\$1,000), or by both that imprisonment and fine.

10 (b) Criminal storage of a firearm in the second degree is
11 punishable by imprisonment in a county jail not exceeding one
12 year, by a fine not exceeding one thousand dollars (\$1,000), or by
13 both that imprisonment and fine.

14 *SEC. 542. Section 25300 of the Penal Code is amended to*
15 *read:*

16 25300. (a) A person commits criminal possession of a firearm
17 when the person carries a firearm in a public place or on any public
18 street while masked so as to hide the person's identity.

19 (b) Criminal possession of a firearm is punishable by
20 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
21 *Section 1170* or by imprisonment in a county jail not to exceed
22 one year.

23 (c) Subdivision (a) does not apply to any of the following:

24 (1) A peace officer in performance of the officer's duties.

25 (2) A full-time paid peace officer of another state or the federal
26 government who is carrying out official duties while in this state.

27 (3) Any person summoned by any of the officers enumerated
28 in paragraph (1) or (2) to assist in making an arrest or preserving
29 the peace while that person is actually engaged in assisting that
30 officer.

31 (4) The possession of an unloaded firearm or a firearm loaded
32 with blank ammunition by an authorized participant in, or while
33 rehearsing for, a motion picture, television, video production,
34 entertainment event, entertainment activity, or lawfully organized
35 and conducted activity when the participant lawfully uses the
36 firearm as part of that production, event, or activity.

37 (5) The possession of a firearm by a licensed hunter while
38 actually engaged in lawful hunting, or while going directly to or
39 returning directly from the hunting expedition.

1 SEC. 543. *Section 25400 of the Penal Code is amended to*
2 *read:*

3 25400. (a) A person is guilty of carrying a concealed firearm
4 when the person does any of the following:

5 (1) Carries concealed within any vehicle that is under the
6 person's control or direction any pistol, revolver, or other firearm
7 capable of being concealed upon the person.

8 (2) Carries concealed upon the person any pistol, revolver, or
9 other firearm capable of being concealed upon the person.

10 (3) Causes to be carried concealed within any vehicle in which
11 the person is an occupant any pistol, revolver, or other firearm
12 capable of being concealed upon the person.

13 (b) A firearm carried openly in a belt holster is not concealed
14 within the meaning of this section.

15 (c) Carrying a concealed firearm in violation of this section is
16 punishable as follows:

17 (1) If the person previously has been convicted of any felony,
18 or of any crime made punishable by a provision listed in Section
19 16580, as a felony.

20 (2) If the firearm is stolen and the person knew or had reasonable
21 cause to believe that it was stolen, as a felony.

22 (3) If the person is an active participant in a criminal street gang,
23 as defined in subdivision (a) of Section 186.22, under the Street
24 Terrorism Enforcement and Prevention Act (Chapter 11
25 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

26 (4) If the person is not in lawful possession of the firearm or
27 the person is within a class of persons prohibited from possessing
28 or acquiring a firearm pursuant to Chapter 2 (commencing with
29 Section 29800) or Chapter 3 (commencing with Section 29900)
30 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
31 and Institutions Code, as a felony.

32 (5) If the person has been convicted of a crime against a person
33 or property, or of a narcotics or dangerous drug violation, by
34 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
35 *Section 1170*, or by imprisonment in a county jail not to exceed
36 one year, by a fine not to exceed one thousand dollars (\$1,000),
37 or by both that imprisonment and fine.

38 (6) If both of the following conditions are met, by imprisonment
39 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170*, or
40 by imprisonment in a county jail not to exceed one year, by a fine

1 not to exceed one thousand dollars (\$1,000), or by both that fine
2 and imprisonment:

3 (A) The pistol, revolver, or other firearm capable of being
4 concealed upon the person is loaded, or both it and the unexpended
5 ammunition capable of being discharged from it are in the
6 immediate possession of the person or readily accessible to that
7 person.

8 (B) The person is not listed with the Department of Justice
9 pursuant to paragraph (1) of subdivision (c) of Section 11106 as
10 the registered owner of that pistol, revolver, or other firearm
11 capable of being concealed upon the person.

12 (7) In all cases other than those specified in paragraphs (1) to
13 (6), inclusive, by imprisonment in a county jail not to exceed one
14 year, by a fine not to exceed one thousand dollars (\$1,000), or by
15 both that imprisonment and fine.

16 (d) (1) Every person convicted under this section who
17 previously has been convicted of a misdemeanor offense
18 enumerated in Section 23515 shall be punished by imprisonment
19 in a county jail for at least three months and not exceeding six
20 months, or, if granted probation, or if the execution or imposition
21 of sentence is suspended, it shall be a condition thereof that the
22 person be imprisoned in a county jail for at least three months.

23 (2) Every person convicted under this section who has
24 previously been convicted of any felony, or of any crime made
25 punishable by a provision listed in Section 16580, if probation is
26 granted, or if the execution or imposition of sentence is suspended,
27 it shall be a condition thereof that the person be imprisoned in a
28 county jail for not less than three months.

29 (e) The court shall apply the three-month minimum sentence
30 as specified in subdivision (d), except in unusual cases where the
31 interests of justice would best be served by granting probation or
32 suspending the imposition or execution of sentence without the
33 minimum imprisonment required in subdivision (d) or by granting
34 probation or suspending the imposition or execution of sentence
35 with conditions other than those set forth in subdivision (d), in
36 which case, the court shall specify on the record and shall enter
37 on the minutes the circumstances indicating that the interests of
38 justice would best be served by that disposition.

39 (f) A peace officer may arrest a person for a violation of
40 paragraph (6) of subdivision (c) if the peace officer has probable

1 cause to believe that the person is not listed with the Department
2 of Justice pursuant to paragraph (1) of subdivision (c) of Section
3 11106 as the registered owner of the pistol, revolver, or other
4 firearm capable of being concealed upon the person, and one or
5 more of the conditions in subparagraph (A) of paragraph (6) of
6 subdivision (c) is met.

7 *SEC. 544. Section 25850 of the Penal Code is amended to*
8 *read:*

9 25850. (a) A person is guilty of carrying a loaded firearm
10 when the person carries a loaded firearm on the person or in a
11 vehicle while in any public place or on any public street in an
12 incorporated city or in any public place or on any public street in
13 a prohibited area of unincorporated territory.

14 (b) In order to determine whether or not a firearm is loaded for
15 the purpose of enforcing this section, peace officers are authorized
16 to examine any firearm carried by anyone on the person or in a
17 vehicle while in any public place or on any public street in an
18 incorporated city or prohibited area of an unincorporated territory.
19 Refusal to allow a peace officer to inspect a firearm pursuant to
20 this section constitutes probable cause for arrest for violation of
21 this section.

22 (c) Carrying a loaded firearm in violation of this section is
23 punishable, as follows:

24 (1) Where the person previously has been convicted of any
25 felony, or of any crime made punishable by a provision listed in
26 Section 16580, as a felony.

27 (2) Where the firearm is stolen and the person knew or had
28 reasonable cause to believe that it was stolen, as a felony.

29 (3) Where the person is an active participant in a criminal street
30 gang, as defined in subdivision (a) of Section 186.22, under the
31 Street Terrorism Enforcement and Prevention Act (Chapter 11
32 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

33 (4) Where the person is not in lawful possession of the firearm,
34 or is within a class of persons prohibited from possessing or
35 acquiring a firearm pursuant to Chapter 2 (commencing with
36 Section 29800) or Chapter 3 (commencing with Section 29900)
37 of Division 9 of this title, or Section 8100 or 8103 of the Welfare
38 and Institutions Code, as a felony.

39 (5) Where the person has been convicted of a crime against a
40 person or property, or of a narcotics or dangerous drug violation,

1 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
2 Section 1170, or by imprisonment in a county jail not to exceed
3 one year, by a fine not to exceed one thousand dollars (\$1,000),
4 or by both that imprisonment and fine.

5 (6) Where the person is not listed with the Department of Justice
6 pursuant to Section 11106 as the registered owner of the handgun,
7 by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of
8 Section 1170, or by imprisonment in a county jail not to exceed
9 one year, or by a fine not to exceed one thousand dollars (\$1,000),
10 or both that fine and imprisonment.

11 (7) In all cases other than those specified in paragraphs (1) to
12 (6), inclusive, as a misdemeanor, punishable by imprisonment in
13 a county jail not to exceed one year, by a fine not to exceed one
14 thousand dollars (\$1,000), or by both that imprisonment and fine.

15 (d) (1) Every person convicted under this section who has
16 previously been convicted of an offense enumerated in Section
17 23515, or of any crime made punishable under a provision listed
18 in Section 16580, shall serve a term of at least three months in a
19 county jail, or, if granted probation or if the execution or imposition
20 of sentence is suspended, it shall be a condition thereof that the
21 person be imprisoned for a period of at least three months.

22 (2) The court shall apply the three-month minimum sentence
23 except in unusual cases where the interests of justice would best
24 be served by granting probation or suspending the imposition or
25 execution of sentence without the minimum imprisonment required
26 in this section or by granting probation or suspending the
27 imposition or execution of sentence with conditions other than
28 those set forth in this section, in which case, the court shall specify
29 on the record and shall enter on the minutes the circumstances
30 indicating that the interests of justice would best be served by that
31 disposition.

32 (e) A violation of this section that is punished by imprisonment
33 in a county jail not exceeding one year shall not constitute a
34 conviction of a crime punishable by imprisonment for a term
35 exceeding one year for the purposes of determining federal firearms
36 eligibility under Section 922(g)(1) of Title 18 of the United States
37 Code.

38 (f) Nothing in this section, or in Article 3 (commencing with
39 Section 25900) or Article 4 (commencing with Section 26000),
40 shall preclude prosecution under Chapter 2 (commencing with

1 Section 29800) or Chapter 3 (commencing with Section 29900)
2 of Division 9 of this title, Section 8100 or 8103 of the Welfare and
3 Institutions Code, or any other law with a greater penalty than this
4 section.

5 (g) Notwithstanding paragraphs (2) and (3) of subdivision (a)
6 of Section 836, a peace officer may make an arrest without a
7 warrant:

8 (1) When the person arrested has violated this section, although
9 not in the officer's presence.

10 (2) Whenever the officer has reasonable cause to believe that
11 the person to be arrested has violated this section, whether or not
12 this section has, in fact, been violated.

13 (h) A peace officer may arrest a person for a violation of
14 paragraph (6) of subdivision (c), if the peace officer has probable
15 cause to believe that the person is carrying a handgun in violation
16 of this section and that person is not listed with the Department of
17 Justice pursuant to paragraph (1) of subdivision (c) of Section
18 11106 as the registered owner of that handgun.

19 *SEC. 545. Section 27590 of the Penal Code is amended to*
20 *read:*

21 27590. (a) Except as provided in subdivision (b), (c), or (e),
22 a violation of this article is a misdemeanor.

23 (b) If any of the following circumstances apply, a violation of
24 this article is punishable by imprisonment ~~in the state prison~~
25 *pursuant to subdivision (h) of Section 1170* for two, three, or four
26 years.

27 (1) If the violation is of subdivision (a) of Section 27500.

28 (2) If the defendant has a prior conviction of violating the
29 provisions, other than Section 27535, of this article or former
30 Section 12100 of this code, as that section read at any time from
31 when it was enacted by Section 3 of Chapter 1386 of the Statutes
32 of 1988 to when it was repealed by Section 18 of Chapter 23 of
33 the Statutes of 1994, or Section 8101 of the Welfare and Institutions
34 Code.

35 (3) If the defendant has a prior conviction of violating any
36 offense specified in Section 29905 or of a violation of Section
37 32625 or 33410, or of former Section 12560, as that section read
38 at any time from when it was enacted by Section 4 of Chapter 931
39 of the Statutes of 1965 to when it was repealed by Section 14 of

1 Chapter 9 of the Statutes of 1990, or of any provision listed in
2 Section 16590.

3 (4) If the defendant is in a prohibited class described in Chapter
4 2 (commencing with Section 29800) or Chapter 3 (commencing
5 with Section 29900) of Division 9 of this title, or Section 8100 or
6 8103 of the Welfare and Institutions Code.

7 (5) A violation of this article by a person who actively
8 participates in a “criminal street gang” as defined in Section 186.22.

9 (6) A violation of Section 27510 involving the delivery of any
10 firearm to a person who the dealer knows, or should know, is a
11 minor.

12 (c) If any of the following circumstances apply, a violation of
13 this article shall be punished by imprisonment in a county jail not
14 exceeding one year or ~~in the state prison pursuant to subdivision~~
15 *(h) of Section 1170*, or by a fine not to exceed one thousand dollars
16 (\$1,000), or by both that fine and imprisonment.

17 (1) A violation of Section 27515, 27520, or subdivision (b) of
18 Section 27500.

19 (2) A violation of Section 27505 involving the sale, loan, or
20 transfer of a handgun to a minor.

21 (3) A violation of Section 27510 involving the delivery of a
22 handgun.

23 (4) A violation of subdivision (a), (c), (d), (e), or (f) of Section
24 27540 involving a pistol, revolver, or other firearm capable of
25 being concealed upon the person.

26 (5) A violation of Section 27545 involving a handgun.

27 (6) A violation of Section 27550.

28 (d) If both of the following circumstances apply, an additional
29 term of imprisonment ~~in the state prison pursuant to subdivision~~
30 *(h) of Section 1170* for one, two, or three years shall be imposed
31 in addition and consecutive to the sentence prescribed.

32 (1) A violation of Section 27510 or subdivision (b) of Section
33 27500.

34 (2) The firearm transferred in violation of Section 27510 or
35 subdivision (b) of Section 27500 is used in the subsequent
36 commission of a felony for which a conviction is obtained and the
37 prescribed sentence is imposed.

38 (e) (1) A first violation of Section 27535 is an infraction
39 punishable by a fine of fifty dollars (\$50).

1 (2) A second violation of Section 27535 is an infraction
2 punishable by a fine of one hundred dollars (\$100).

3 (3) A third or subsequent violation of Section 27535 is a
4 misdemeanor.

5 (4) For purposes of this subdivision each application to purchase
6 a handgun in violation of Section 27535 shall be deemed a separate
7 offense.

8 *SEC. 546. Section 28250 of the Penal Code is amended to*
9 *read:*

10 28250. (a) Any person who does any of the following is guilty
11 of a misdemeanor:

12 (1) Furnishing a fictitious name or address for the register under
13 Section 28210 or the electronic or telephonic transfer under Section
14 28215.

15 (2) Knowingly furnishing any incorrect information for the
16 register under Section 28210 or the electronic or telephonic transfer
17 under Section 28215.

18 (3) Knowingly omitting any information required to be provided
19 for the register under Section 28210 or the electronic or telephonic
20 transfer under Section 28215.

21 (4) Violating any provision of this article.

22 (b) Notwithstanding subdivision (a), any person who is
23 prohibited from obtaining a firearm pursuant to Chapter 2
24 (commencing with Section 29800) or Chapter 3 (commencing with
25 Section 29900) of Division 9 of this title, or Section 8100 or 8103
26 of the Welfare and Institutions Code, who does any of the following
27 shall be punished by imprisonment in a county jail not exceeding
28 one year or imprisonment ~~in the state prison~~ *pursuant to subdivision*
29 *(h) of Section 1170* for a term of 8, 12, or 18 months:

30 (1) Knowingly furnishes a fictitious name or address for the
31 register under Section 28210 or the electronic or telephonic transfer
32 under Section 28215.

33 (2) Knowingly furnishes any incorrect information for the
34 register under Section 28210 or the electronic or telephonic transfer
35 under Section 28215.

36 (3) Knowingly omits any information required to be provided
37 for the register under Section 28210 or the electronic or telephonic
38 transfer under Section 28215.

39 *SEC. 547. Section 29700 of the Penal Code is amended to*
40 *read:*

1 29700. Every minor who violates this chapter shall be punished
2 as follows:

3 (a) By imprisonment ~~in the state prison~~ *pursuant to subdivision*
4 *(h) of Section 1170* or in a county jail if one of the following
5 applies:

6 (1) The minor has been found guilty previously of violating this
7 chapter.

8 (2) The minor has been found guilty previously of an offense
9 specified in Section 29905, 32625, or 33410, or an offense
10 specified in any provision listed in Section 16590.

11 (3) The minor has been found guilty of a violation of Section
12 29610.

13 (b) Violations of this chapter other than those violations
14 specified in subdivision (a) shall be punishable as a misdemeanor.

15 *SEC. 548. Section 30315 of the Penal Code is amended to*
16 *read:*

17 30315. Any person, firm, or corporation who, within this state
18 knowingly possesses any handgun ammunition designed primarily
19 to penetrate metal or armor is guilty of a public offense and upon
20 conviction thereof shall be punished by imprisonment ~~in the state~~
21 ~~prison~~ *pursuant to subdivision (h) of Section 1170*, or in the county
22 jail for a term not to exceed one year, or by a fine not to exceed
23 five thousand dollars (\$5,000), or by both that fine and
24 imprisonment.

25 *SEC. 549. Section 30600 of the Penal Code is amended to*
26 *read:*

27 30600. (a) Any person who, within this state, manufactures
28 or causes to be manufactured, distributes, transports, or imports
29 into the state, keeps for sale, or offers or exposes for sale, or who
30 gives or lends any assault weapon or any .50 BMG rifle, except
31 as provided by this chapter, is guilty of a felony, and upon
32 conviction shall be punished by imprisonment ~~in the state prison~~
33 *pursuant to subdivision (h) of Section 1170* for four, six, or eight
34 years.

35 (b) In addition and consecutive to the punishment imposed under
36 subdivision (a), any person who transfers, lends, sells, or gives
37 any assault weapon or any .50 BMG rifle to a minor in violation
38 of subdivision (a) shall receive an enhancement of *imprisonment*
39 *pursuant to subdivision (h) of Section 1170* of one year.

1 (c) Except in the case of a first violation involving not more
2 than two firearms as provided in Sections 30605 and 30610, for
3 purposes of this article, if more than one assault weapon or .50
4 BMG rifle is involved in any violation of this article, there shall
5 be a distinct and separate offense for each.

6 *SEC. 550. Section 30605 of the Penal Code is amended to*
7 *read:*

8 30605. (a) Any person who, within this state, possesses any
9 assault weapon, except as provided in this chapter, shall be
10 punished by imprisonment in a county jail for a period not
11 exceeding one year, or by imprisonment ~~in the state prison pursuant~~
12 *to subdivision (h) of Section 1170.*

13 (b) Notwithstanding subdivision (a), a first violation of these
14 provisions is punishable by a fine not exceeding five hundred
15 dollars (\$500) if the person was found in possession of no more
16 than two firearms in compliance with Section 30945 and the person
17 meets all of the following conditions:

18 (1) The person proves that he or she lawfully possessed the
19 assault weapon prior to the date it was defined as an assault
20 weapon.

21 (2) The person has not previously been convicted of a violation
22 of this article.

23 (3) The person was found to be in possession of the assault
24 weapon within one year following the end of the one-year
25 registration period established pursuant to Section 30900.

26 (4) The person relinquished the firearm pursuant to Section
27 31100, in which case the assault weapon shall be destroyed
28 pursuant to Sections 18000 and 18005.

29 *SEC. 551. Section 30725 of the Penal Code is amended to*
30 *read:*

31 30725. (a) Any person who complies with Section 30720 shall
32 be exempt from the prohibitions set forth in Section 30600 or
33 30605 for those acts by that person associated with complying
34 with the requirements of Section 30720.

35 (b) Failure to comply with Section 30720 is a public offense
36 punishable by imprisonment ~~in the state prison pursuant to~~
37 *subdivision (h) of Section 1170*, or in a county jail, not exceeding
38 one year.

39 *SEC. 552. Section 31360 of the Penal Code is amended to*
40 *read:*

1 31360. (a) A person who has been convicted of a violent felony
2 under the laws of the United States, the State of California, or any
3 other state, government, or country, who purchases, owns, or
4 possesses body armor, as defined in Section 16288, except as
5 authorized under subdivision (b), is guilty of a felony, punishable
6 by imprisonment ~~in a state prison~~ pursuant to subdivision (h) of
7 Section 1170 for 16 months, or two or three years.

8 (b) A person whose employment, livelihood, or safety is
9 dependent on the ability to legally possess and use body armor,
10 who is subject to the prohibition imposed by subdivision (a) due
11 to a prior violent felony conviction, may file a petition for an
12 exception to this prohibition with the chief of police or county
13 sheriff of the jurisdiction in which that person seeks to possess
14 and use the body armor. The chief of police or sheriff may reduce
15 or eliminate the prohibition, impose conditions on reduction or
16 elimination of the prohibition, or otherwise grant relief from the
17 prohibition as the chief of police or sheriff deems appropriate,
18 based on the following:

19 (1) A finding that the petitioner is likely to use body armor in
20 a safe and lawful manner.

21 (2) A finding that the petitioner has a reasonable need for this
22 type of protection under the circumstances.

23 In making its decision, the chief of police or sheriff shall consider
24 the petitioner's continued employment, the interests of justice, any
25 relevant evidence, and the totality of the circumstances. It is the
26 intent of the Legislature that law enforcement officials exercise
27 broad discretion in fashioning appropriate relief under this
28 paragraph in cases in which relief is warranted. However, this
29 paragraph may not be construed to require law enforcement
30 officials to grant relief to any particular petitioner. Relief from this
31 prohibition does not relieve any other person or entity from any
32 liability that might otherwise be imposed.

33 (c) The chief of police or sheriff shall require, as a condition of
34 granting an exception under subdivision (b), that the petitioner
35 agree to maintain on the petitioner's person a certified copy of the
36 law enforcement official's permission to possess and use body
37 armor, including any conditions or limitations.

38 (d) Law enforcement officials who enforce the prohibition
39 specified in subdivision (a) against a person who has been granted
40 relief pursuant to subdivision (b), shall be immune from any

liability for false arrest arising from the enforcement of this subdivision unless the person has in possession a certified copy of the permission granting the person relief from the prohibition, as required by subdivision (c). This immunity from liability does not relieve any person or entity from any other liability that might otherwise be imposed.

SEC. 553. Section 32625 of the Penal Code is amended to read:

32625. (a) Any person, firm, or corporation, who within this state possesses or knowingly transports a machinegun, except as authorized by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~, or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(b) Any person, firm, or corporation who within this state intentionally converts a firearm into a machinegun, or who sells, or offers for sale, or knowingly manufactures a machinegun, except as authorized by this chapter, is punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ for four, six, or eight years.

SEC. 554. Section 33410 of the Penal Code is amended to read:

33410. Any person, firm, or corporation who within this state possesses a silencer is guilty of a felony and upon conviction thereof shall be punished by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170~~ or by a fine not to exceed ten thousand dollars (\$10,000), or by both that fine and imprisonment.

SEC. 555. Section 10283 of the Public Contract Code is amended to read:

10283. Such felonies are punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~.

SEC. 556. Section 10873 of the Public Contract Code is amended to read:

10873. Such felonies are punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~.

1 SEC. 557. *Section 5097.99 of the Public Resources Code is*
2 *amended to read:*

3 5097.99. (a) No person shall obtain or possess any Native
4 American artifacts or human remains which are taken from a Native
5 American grave or cairn on or after January 1, 1984, except as
6 otherwise provided by law or in accordance with an agreement
7 reached pursuant to subdivision (l) of Section 5097.94 or pursuant
8 to Section 5097.98.

9 (b) Any person who knowingly or willfully obtains or possesses
10 any Native American artifacts or human remains which are taken
11 from a Native American grave or cairn after January 1, 1988,
12 except as otherwise provided by law or in accordance with an
13 agreement reached pursuant to subdivision (l) of Section 5097.94
14 or pursuant to Section 5097.98, is guilty of a felony which is
15 punishable by imprisonment ~~in the state prison pursuant to~~
16 *subdivision (h) of Section 1170 of the Penal Code.*

17 (c) Any person who removes, without authority of law, any
18 Native American artifacts or human remains from a Native
19 American grave or cairn with an intent to sell or dissect or with
20 malice or wantonness is guilty of a felony which is punishable by
21 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
22 *Section 1170 of the Penal Code.*

23 SEC. 558. *Section 14591 of the Public Resources Code is*
24 *amended to read:*

25 14591. (a) Except as provided in subdivision (b), in addition
26 to any other applicable civil or criminal penalties, any person
27 convicted of a violation of this division is guilty of an infraction,
28 which is punishable by a fine of one hundred dollars (\$100) for
29 each initial separate violation and not more than one thousand
30 dollars (\$1,000) for each subsequent separate violation per day.

31 (b) (1) Every person who, with intent to defraud, takes any of
32 the following actions is guilty of fraud:

33 (A) Submits a false or fraudulent claim for payment pursuant
34 to Section 14573 or 14573.5.

35 (B) Fails to accurately report the number of beverage containers
36 sold, as required by subdivision (b) of Section 14550.

37 (C) Fails to make payments as required by Section 14574.

38 (D) Redeems out-of-state containers, rejected containers, line
39 breakage, or containers that have already been redeemed.

1 (E) Returns redeemed containers to the marketplace for
2 redemption.

3 (F) Brings out-of-state containers, rejected containers, or line
4 breakage to the marketplace for redemption.

5 (G) Submits a false or fraudulent claim for handling fee
6 payments pursuant to Section 14585.

7 (2) If the money obtained or withheld pursuant to paragraph (1)
8 exceeds nine hundred fifty dollars (\$950), the fraud is punishable
9 by imprisonment in the county jail for not more than one year or
10 by a fine not exceeding ten thousand dollars (\$10,000), or by both,
11 or by imprisonment ~~in the state prison~~ *pursuant to subdivision (h)*
12 *of Section 1170 of the Penal Code* for 16 months, two years, or
13 three years, or by a fine not exceeding twenty-five thousand dollars
14 (\$25,000) or twice the late or unmade payments plus interest,
15 whichever is greater, or by both fine and imprisonment. If the
16 money obtained or withheld pursuant to paragraph (1) equals, or
17 is less than, nine hundred fifty dollars (\$950), the fraud is
18 punishable by imprisonment in the county jail for not more than
19 six months or by a fine not exceeding one thousand dollars
20 (\$1,000), or by both.

21 (c) For purposes of this section and Chapter 8.5 (commencing
22 with Section 14595), “line breakage” and “rejected container”
23 have the same meanings as defined in the regulations adopted or
24 amended by the department pursuant to this division.

25 *SEC. 559. Section 25205 of the Public Resources Code is*
26 *amended to read:*

27 25205. (a) No person shall be a member of the commission
28 who, during the two years prior to appointment on the commission,
29 received any substantial portion of his or her income directly or
30 indirectly from any electric utility, or who engages in sale or
31 manufacture of any major component of any facility. A member
32 of the commission shall not be employed by any electric utility,
33 applicant, or, within two years after he or she ceases to be a
34 member of the commission, by any person who engages in the sale
35 or manufacture of any major component of any facility.

36 (b) Except as provided in Section 25202, the members of the
37 commission shall not hold any other elected or appointed public
38 office or position.

1 (c) The members of the commission and all employees of the
2 commission shall comply with all applicable provisions of Section
3 19251 of the Government Code.

4 (d) A person who is a member or employee of the commission
5 shall not participate personally and substantially as a member or
6 employee of the commission, through decision, approval,
7 disapproval, recommendation, the rendering of advice,
8 investigation, or otherwise, in a judicial or other proceeding,
9 hearing, application, request for a ruling, or other determination,
10 contract, claim, controversy, study, plan, or other particular matter
11 in which, to his or her knowledge, he or she, his or her spouse,
12 minor child, or partner, or any organization, except a governmental
13 agency or educational or research institution qualifying as a
14 nonprofit organization under state or federal income tax law, in
15 which he or she is serving, or has served as officer, director, trustee,
16 partner, or employee while serving as a member or employee of
17 the commission or within two years prior to his or her appointment
18 as a member of the commission, has a direct or indirect financial
19 interest.

20 (e) A person who is a partner, employer, or employee of a
21 member or employee of the commission shall not act as an attorney,
22 agent, or employee for any person other than the state in connection
23 with any judicial or other proceeding, hearing, application, request
24 for a ruling, or other determination, contract, claim, controversy,
25 study, plan, or other particular matter in which the commission is
26 a party or has a direct and substantial interest.

27 (f) The provisions of this section shall not apply if the Attorney
28 General finds that the interest of the member or employee of the
29 commission is not so substantial as to be deemed likely to affect
30 the integrity of the services which the state may expect from the
31 member or employee.

32 (g) Any person who violates any provision of this section is
33 guilty of a felony and shall be subject to a fine of not more than
34 ten thousand dollars (\$10,000) or imprisonment ~~in the state prison~~
35 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
36 *both that fine and imprisonment*.

37 (h) The amendment of subdivision (d) of this section enacted
38 by the 1975–76 Regular Session of the Legislature does not
39 constitute a change in, but is declaratory of, existing law.

1 *SEC. 560. Section 48680 of the Public Resources Code is*
2 *amended to read:*

3 48680. (a) Except as provided in subdivision (b), in addition
4 to any other civil or criminal penalties, any person convicted of a
5 violation of this chapter is guilty of an infraction, which is
6 punishable by a fine of not more than one hundred dollars (\$100)
7 per day for each day the violation occurs.

8 (b) (1) Every person who, with intent to defraud, does not
9 accurately report the amount of oil sold, collected, or transferred
10 pursuant to Article 8 (commencing with Section 48670), who, with
11 intent to defraud, does not make payments as required by Section
12 48650, or who knowingly receives or pays a recycling incentive
13 for oil upon which a payment has not been made pursuant to
14 Section 48650 is guilty of fraud. If the money obtained or withheld
15 is four hundred dollars (\$400) or less, the fraud is punishable by
16 imprisonment in the county jail for not more than six months, by
17 a fine of not more than one thousand dollars (\$1,000), or by both
18 that fine and imprisonment. If the money obtained or withheld is
19 more than four hundred dollars (\$400), the fraud is punishable by
20 imprisonment in the county jail for not more than one year or
21 ~~imprisonment in the state prison~~ *pursuant to subdivision (h) of*
22 *Section 1170 of the Penal Code*, by a fine not exceeding ten
23 thousand dollars (\$10,000), or twice the late or unpaid payments
24 plus interest, whichever is greater, or by both that fine and
25 imprisonment.

26 (2) Any person who claims an exemption pursuant to this chapter
27 which the person knows to be false, and makes that claim for the
28 purpose of willfully evading the payment of any fee imposed
29 pursuant to this chapter, is guilty of a misdemeanor punishable by
30 imprisonment in the county jail for not more than one year. The
31 person shall also be subject to payment of a fine not to exceed five
32 thousand dollars (\$5,000). The fine shall be distributed as follows:

33 (A) Fifty percent to the local jurisdiction which undertook the
34 prosecution.

35 (B) Fifty percent to the General Fund.

36 (c) Any person who violates this chapter may be assessed a civil
37 penalty by the board of not more than one hundred dollars (\$100)
38 per day for each day the violation occurs or continues, pursuant
39 to a hearing and notice.

1 *SEC. 561. Section 7680 of the Public Utilities Code is amended*
2 *to read:*

3 7680. Every conductor, engineer, brakeman, switchman, or
4 other person having charge, wholly or in part, of any railroad, car,
5 locomotive, or train, who willfully or negligently suffers or causes
6 it to collide with another car, locomotive, or train, or with any
7 other object or thing whereby the death of a human being is
8 produced, is punishable by imprisonment ~~in the state prison~~
9 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
10 two, three or four years.

11 *SEC. 562. Section 7724 of the Public Utilities Code is amended*
12 *to read:*

13 7724. (a) Any person who commits any of the following acts,
14 shall, upon conviction, be punished by imprisonment in the county
15 jail for not more than one year or by imprisonment ~~in the state~~
16 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
17 *Code* for 16, 24, or 36 months:

18 (1) Except as provided by Section 7724.1, knowingly fails to
19 follow the direction or order of the secretary or the commission
20 arising from a rail accident or release of a hazardous or potentially
21 hazardous commodity from a railcar.

22 (2) Knowingly causes, or aids or abets in, the discharge or spill
23 of, a hazardous or potentially hazardous commodity from a railcar,
24 unless the discharge is authorized by the United States, the state,
25 or another agency with appropriate jurisdiction.

26 (3) Knowingly fails to comply with the regulations adopted
27 pursuant to Section 7712, and that failure results in a rail accident
28 or release of hazardous material or creates a significant risk of
29 accident or release of hazardous material.

30 (b) The court shall also impose upon a person convicted of
31 violating subdivision (a), a fine not to exceed five hundred
32 thousand dollars (\$500,000) for each violation. For purposes of
33 this subdivision, each day or partial day that a violation occurs is
34 a separate violation.

35 (c) The court shall also impose upon a person convicted of
36 violating paragraph (1) of subdivision (a), a fine equal to twice the
37 cost of abating, repairing, and responding to the cost associated
38 with the illegal discharge of a hazardous or potentially hazardous
39 commodity from a railcar as a result of a rail accident.

1 *SEC. 563. Section 7903 of the Public Utilities Code is amended*
2 *to read:*

3 7903. Every agent, operator, or employee of any telegraph or
4 telephone office, who in any way uses or appropriates any
5 information derived by him from any private message passing
6 through his hands, and addressed to any other person, or in any
7 other manner acquired by him by reason of his trust as such agent,
8 operator, or employee, or trades or speculates upon any such
9 information so obtained, or in any manner turns, or attempts to
10 turn, the information so obtained to his own account, profit, or
11 advantage, is punishable by imprisonment ~~in the state prison~~
12 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
13 by imprisonment ~~in the~~ a county jail not exceeding one year, or
14 by fine not exceeding ten thousand dollars (\$10,000), or by both
15 ~~such~~ that fine and imprisonment.

16 *SEC. 564. Section 21407.6 of the Public Utilities Code is*
17 *amended to read:*

18 21407.6. (a) Any person convicted under Section 21407.1
19 shall be punished upon a first conviction by imprisonment in the
20 county jail for not less than 30 days nor more than six months or
21 by a fine of not less than two hundred fifty dollars (\$250) nor more
22 than one thousand dollars (\$1,000) or by both ~~such~~ that fine and
23 imprisonment.

24 Any person convicted under Section 21407.1 shall be punished
25 upon a second or any subsequent conviction by imprisonment in
26 the county jail for not less than five days nor more than one year
27 and by a fine of not less than two hundred fifty dollars (\$250) nor
28 more than one thousand dollars (\$1,000), without being granted
29 probation by the court and without having the court suspend the
30 execution of the sentence.

31 (b) Any person convicted under Section 21407.1 and who, when
32 so operating an aircraft, has done any act forbidden by law or
33 neglects any duty imposed by law in the operation of the aircraft,
34 which act or neglect proximately causes bodily injury to any person
35 other than the operator shall be punished by imprisonment ~~in the~~
36 ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the*
37 *Penal Code*, or in the county jail for not less than 90 days nor more
38 than one year and by fine of not less than two hundred fifty dollars
39 (\$250) nor more than ten thousand dollars (\$10,000).

1 *SEC. 565. Section 7093.6 of the Revenue and Taxation Code,*
2 *as amended by Section 171 of Chapter 140 of the Statutes of 2009,*
3 *is amended to read:*

4 7093.6. (a) (1) Beginning January 1, 2003, the executive
5 director and chief counsel of the board, or their delegates, may
6 compromise any final tax liability in which the reduction of tax is
7 seven thousand five hundred dollars (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final tax liability involving a reduction in tax
11 in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final tax liability in which the reduction of tax is in excess of
18 seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

20 (b) For purposes of this section, “a final tax liability” means
21 any final tax liability arising under Part 1 (commencing with
22 Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6
23 (commencing with Section 7251), and Part 1.7 (commencing with
24 Section 7280) or related interest, additions to tax, penalties, or
25 other amounts assessed under this part.

26 (c) (1) Offers in compromise shall be considered only for
27 liabilities that were generated from a business that has been
28 discontinued or transferred, where the taxpayer making the offer
29 no longer has a controlling interest or association with the
30 transferred business or has a controlling interest or association
31 with a similar type of business as the transferred or discontinued
32 business.

33 (2) Notwithstanding paragraph (1), a qualified final tax liability
34 may be compromised regardless of whether the business has been
35 discontinued or transferred or whether the taxpayer has a
36 controlling interest or association with a similar type of business
37 as the transferred or discontinued business. All other provisions
38 of this section that apply to a final tax liability shall also apply to
39 a qualified final tax liability, and no compromise shall be made
40 under this subdivision unless all other requirements of this section

1 are met. For purposes of this subdivision, a “qualified final tax
2 liability” means any of the following:

3 (A) That part of a final tax liability, including related interest,
4 additions to tax, penalties, or other amounts assessed under this
5 part, arising from a transaction or transactions in which the board
6 finds no evidence that the taxpayer collected sales tax
7 reimbursement or use tax from the purchaser or other person and
8 which was determined against the taxpayer under Article 2
9 (commencing with Section 6481), Article 3 (commencing with
10 Section 6511), and Article 5 (commencing with Section 6561) of
11 Chapter 5.

12 (B) A final tax liability, including related interest, additions to
13 tax, penalties, or other amounts assessed under this part, arising
14 under Article 7 (commencing with Section 6811) of Chapter 6.

15 (C) That part of a final tax liability for use tax, including related
16 interest, additions to tax, penalties, or other amounts assessed under
17 this part, determined under Article 2 (commencing with Section
18 6481), Article 3 (commencing with Section 6511), and Article 5
19 (commencing with Section 6561) of Chapter 5, against a taxpayer
20 who is a consumer that is not required to hold a permit under
21 Section 6066.

22 (3) A qualified final tax liability may not be compromised with
23 any of the following:

24 (A) A taxpayer who previously received a compromise under
25 paragraph (2) for a liability, or a part thereof, arising from a
26 transaction or transactions that are substantially similar to the
27 transaction or transactions attributable to the liability for which
28 the taxpayer is making the offer.

29 (B) A business that was transferred by a taxpayer who previously
30 received a compromise under paragraph (2) and who has a
31 controlling interest or association with the transferred business,
32 when the liability for which the offer is made is attributable to a
33 transaction or transactions substantially similar to the transaction
34 or transactions for which the taxpayer’s liability was previously
35 compromised.

36 (C) A business in which a taxpayer who previously received a
37 compromise under paragraph (2) has a controlling interest or
38 association with a similar type of business for which the taxpayer
39 received the compromise, when the liability of the business making
40 the offer arose from a transaction or transactions substantially

1 similar to the transaction or transactions for which the taxpayer's
2 liability was previously compromised.

3 (d) The board may, in its discretion, enter into a written
4 agreement that permits the taxpayer to pay the compromise in
5 installments for a period not exceeding one year. The agreement
6 may provide that the installments shall be paid by electronic funds
7 transfers or any other means to facilitate the payment of each
8 installment.

9 (e) Except for any recommendation for approval as specified
10 in subdivision (a), the members of the State Board of Equalization
11 shall not participate in any offer in compromise matters pursuant
12 to this section.

13 (f) A taxpayer that has received a compromise under paragraph
14 (2) of subdivision (c) may be required to enter into any collateral
15 agreement that is deemed necessary for the protection of the
16 interests of the state. A collateral agreement may include a
17 provision that allows the board to reestablish the liability, or any
18 portion thereof, if the taxpayer has sufficient annual income during
19 the succeeding five-year period. The board shall establish criteria
20 for determining "sufficient annual income" for purposes of this
21 subdivision.

22 (g) A taxpayer that has received a compromise under paragraph
23 (2) of subdivision (c) shall file and pay by the due date all
24 subsequently required sales and use tax returns for a five-year
25 period from the date the liability is compromised, or until the
26 taxpayer is no longer required to file sales and use tax returns,
27 whichever period is earlier.

28 (h) For amounts to be compromised under this section, the
29 following conditions shall exist:

30 (1) The taxpayer shall establish that:

31 (A) The amount offered in payment is the most that can be
32 expected to be paid or collected from the taxpayer's present assets
33 or income.

34 (B) The taxpayer does not have reasonable prospects of
35 acquiring increased income or assets that would enable the taxpayer
36 to satisfy a greater amount of the liability than the amount offered,
37 within a reasonable period of time.

38 (2) The board shall have determined that acceptance of the
39 compromise is in the best interest of the state.

1 (i) A determination by the board that it would not be in the best
2 interest of the state to accept an offer in compromise in satisfaction
3 of a final tax liability shall not be subject to administrative appeal
4 or judicial review.

5 (j) When an offer in compromise is either accepted or rejected,
6 or the terms and conditions of a compromise agreement are
7 fulfilled, the board shall notify the taxpayer in writing. In the event
8 an offer is rejected, the amount posted will either be applied to the
9 liability or refunded, at the discretion of the taxpayer.

10 (k) When more than one taxpayer is liable for the debt, such as
11 with spouses or partnerships or other business combinations, the
12 acceptance of an offer in compromise from one liable taxpayer
13 shall not relieve the other taxpayers from paying the entire liability.
14 However, the amount of the liability shall be reduced by the amount
15 of the accepted offer.

16 (l) Whenever a compromise of tax or penalties or total tax and
17 penalties in excess of five hundred dollars (\$500) is approved,
18 there shall be placed on file for at least one year in the office of
19 the executive director of the board a public record with respect to
20 that compromise. The public record shall include all of the
21 following information:

22 (1) The name of the taxpayer.

23 (2) The amount of unpaid tax and related penalties, additions
24 to tax, interest, or other amounts involved.

25 (3) The amount offered.

26 (4) A summary of the reason why the compromise is in the best
27 interest of the state.

28 The public record shall not include any information that relates
29 to any trade secrets, patent, process, style of work, apparatus,
30 business secret, or organizational structure, that if disclosed, would
31 adversely affect the taxpayer or violate the confidentiality
32 provisions of Section 7056. No list shall be prepared and no
33 releases distributed by the board in connection with these
34 statements.

35 (m) Any compromise made under this section may be rescinded,
36 all compromised liabilities may be reestablished (without regard
37 to any statute of limitations that otherwise may be applicable), and
38 no portion of the amount offered in compromise refunded, if either
39 of the following occurs:

1 (1) The board determines that any person did any of the
2 following acts regarding the making of the offer:

3 (A) Concealed from the board any property belonging to the
4 estate of any taxpayer or other person liable for the tax.

5 (B) Received, withheld, destroyed, mutilated, or falsified any
6 book, document, or record, or made any false statement, relating
7 to the estate or financial condition of the taxpayer or other person
8 liable for the tax.

9 (2) The taxpayer fails to comply with any of the terms and
10 conditions relative to the offer.

11 (n) Any person who, in connection with any offer or compromise
12 under this section, or offer of that compromise to enter into that
13 agreement, willfully does either of the following shall be guilty of
14 a felony and, upon conviction, shall be fined not more than fifty
15 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
16 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
17 both, together with the costs of investigation and prosecution:

18 (1) Conceals from any officer or employee of this state any
19 property belonging to the estate of a taxpayer or other person liable
20 in respect of the tax.

21 (2) Receives, withholds, destroys, mutilates, or falsifies any
22 book, document, or record, or makes any false statement, relating
23 to the estate or financial condition of the taxpayer or other person
24 liable in respect of the tax.

25 (o) For purposes of this section, “person” means the taxpayer,
26 any member of the taxpayer’s family, any corporation, agent,
27 fiduciary, or representative of, or any other individual or entity
28 acting on behalf of, the taxpayer, or any other corporation or entity
29 owned or controlled by the taxpayer, directly or indirectly, or that
30 owns or controls the taxpayer, directly or indirectly.

31 (p) This section shall remain in effect only until January 1, 2013,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2013, deletes or extends that date.

34 *SEC. 566. Section 7093.6 of the Revenue and Taxation Code,*
35 *as amended by Section 172 of Chapter 140 of the Statutes of 2009,*
36 *is amended to read:*

37 7093.6. (a) (1) The executive director and chief counsel of
38 the board, or their delegates, may compromise any final tax liability
39 in which the reduction of tax is seven thousand five hundred dollars
40 (\$7,500) or less.

1 (2) Except as provided in paragraph (3), the board, upon
2 recommendation by its executive director and chief counsel, jointly,
3 may compromise a final tax liability involving a reduction in tax
4 in excess of seven thousand five hundred dollars (\$7,500). Any
5 recommendation for approval of an offer in compromise that is
6 not either approved or disapproved within 45 days of the
7 submission of the recommendation shall be deemed approved.

8 (3) The board, itself, may by resolution delegate to the executive
9 director and the chief counsel, jointly, the authority to compromise
10 a final tax liability in which the reduction of tax is in excess of
11 seven thousand five hundred dollars (\$7,500), but less than ten
12 thousand dollars (\$10,000).

13 (b) For purposes of this section, “a final tax liability” means
14 any final tax liability arising under Part 1 (commencing with
15 Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6
16 (commencing with Section 7251), and Part 1.7 (commencing with
17 Section 7280) or related interest, additions to tax, penalties, or
18 other amounts assessed under this part.

19 (c) Offers in compromise shall be considered only for liabilities
20 that were generated from a business that has been discontinued or
21 transferred, where the taxpayer making the offer no longer has a
22 controlling interest or association with the transferred business or
23 has a controlling interest or association with a similar type of
24 business as the transferred or discontinued business.

25 (d) For amounts to be compromised under this section, the
26 following conditions shall exist:

27 (1) The taxpayer shall establish that:

28 (A) The amount offered in payment is the most that can be
29 expected to be paid or collected from the taxpayer’s present assets
30 or income.

31 (B) The taxpayer does not have reasonable prospects of
32 acquiring increased income or assets that would enable the taxpayer
33 to satisfy a greater amount of the liability than the amount offered,
34 within a reasonable period of time.

35 (2) The board shall have determined that acceptance of the
36 compromise is in the best interest of the state.

37 (e) A determination by the board that it would not be in the best
38 interest of the state to accept an offer in compromise in satisfaction
39 of a final tax liability shall not be subject to administrative appeal
40 or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 7056. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

1 (B) Received, withheld, destroyed, mutilated, or falsified any
2 book, document, or record, or made any false statement, relating
3 to the estate or financial condition of the taxpayer or other person
4 liable for the tax.

5 (2) The taxpayer fails to comply with any of the terms and
6 conditions relative to the offer.

7 (j) Any person who, in connection with any offer or compromise
8 under this section, or offer of that compromise to enter into that
9 agreement, willfully does either of the following shall be guilty of
10 a felony and, upon conviction, shall be fined not more than fifty
11 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
12 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
13 both, together with the costs of investigation and prosecution:

14 (1) Conceals from any officer or employee of this state any
15 property belonging to the estate of a taxpayer or other person liable
16 in respect of the tax.

17 (2) Receives, withholds, destroys, mutilates, or falsifies any
18 book, document, or record, or makes any false statement, relating
19 to the estate or financial condition of the taxpayer or other person
20 liable in respect of the tax.

21 (k) For purposes of this section, “person” means the taxpayer,
22 any member of the taxpayer’s family, any corporation, agent,
23 fiduciary, or representative of, or any other individual or entity
24 acting on behalf of, the taxpayer, or any other corporation or entity
25 owned or controlled by the taxpayer, directly or indirectly, or that
26 owns or controls the taxpayer, directly or indirectly.

27 (l) This section shall become operative on January 1, 2013.

28 *SEC. 567. Section 9278 of the Revenue and Taxation Code, as*
29 *amended by Section 2 of Chapter 222 of the Statutes of 2008, is*
30 *amended to read:*

31 9278. (a) (1) Beginning January 1, 2003, the executive director
32 and chief counsel of the board, or their delegates, may compromise
33 any final tax liability in which the reduction of tax is seven
34 thousand five hundred dollars (\$7,500) or less.

35 (2) Except as provided in paragraph (3), the board, upon
36 recommendation by its executive director and chief counsel, jointly,
37 may compromise a final tax liability involving a reduction in tax
38 in excess of seven thousand five hundred dollars (\$7,500). Any
39 recommendation for approval of an offer in compromise that is

1 not either approved or disapproved within 45 days of the
2 submission of the recommendation shall be deemed approved.

3 (3) The board, itself, may by resolution delegate to the executive
4 director and the chief counsel, jointly, the authority to compromise
5 a final tax liability in which the reduction of tax is in excess of
6 seven thousand five hundred dollars (\$7,500), but less than ten
7 thousand dollars (\$10,000).

8 (b) For purposes of this section, “a final tax liability” means
9 any final tax liability arising under Part 3 (commencing with
10 Section 8601), or related interest, additions to tax, penalties, or
11 other amounts assessed under this part.

12 (c) (1) Offers in compromise shall be considered only for
13 liabilities that were generated from a business that has been
14 discontinued or transferred, where the taxpayer making the offer
15 no longer has a controlling interest or association with the
16 transferred business or has a controlling interest or association
17 with a similar type of business as the transferred or discontinued
18 business.

19 (2) Notwithstanding paragraph (1), a qualified final tax liability
20 may be compromised regardless of whether the business has been
21 discontinued or transferred or whether the taxpayer has a
22 controlling interest or association with a similar type of business
23 as the transferred or discontinued business. All other provisions
24 of this section that apply to a final tax liability shall also apply to
25 a qualified final tax liability, and no compromise shall be made
26 under this subdivision unless all other requirements of this section
27 are met. For purposes of this subdivision, a “qualified final tax
28 liability” means either of the following:

29 (A) That part of a final tax liability, including related interest,
30 additions to tax, penalties or other amounts assessed under this
31 part, arising from a transaction or transactions in which the board
32 finds no evidence that the vendor collected use fuel tax
33 reimbursement from the purchaser or other person and which was
34 determined against the vendor under Article 2 (commencing with
35 Section 8776), Article 3 (commencing with Section 8801), or
36 Article 5 (commencing with Section 8851) of Chapter 4.

37 (B) A final tax liability, including related interest, additions to
38 tax, penalties or other amounts assessed under this part, arising
39 under Article 4.5 (commencing with Section 9021) of Chapter 5.

1 (3) A qualified final tax liability may not be compromised with
2 any of the following:

3 (A) A taxpayer who previously received a compromise under
4 paragraph (2) for a liability, or a part thereof, arising from a
5 transaction or transactions that are substantially similar to the
6 transaction or transactions attributable to the liability for which
7 the taxpayer is making the offer.

8 (B) A business that was transferred by a taxpayer who previously
9 received a compromise under paragraph (2) and who has a
10 controlling interest or association with the transferred business,
11 when the liability for which the offer is made is attributable to a
12 transaction or transactions substantially similar to the transaction
13 or transactions for which the taxpayer's liability was previously
14 compromised.

15 (C) A business in which a taxpayer who previously received a
16 compromise under paragraph (2) has a controlling interest or
17 association with a similar type of business for which the taxpayer
18 received the compromise, when the liability of the business making
19 the offer arose from a transaction or transactions substantially
20 similar to the transaction or transactions for which the taxpayer's
21 liability was previously compromised.

22 (d) The board may, in its discretion, enter into a written
23 agreement which permits the taxpayer to pay the compromise in
24 installments for a period not exceeding one year. The agreement
25 may provide that such installments shall be paid by electronic
26 funds transfers or any other means to facilitate the payment of each
27 installment.

28 (e) Except for any recommendation for approval as specified
29 in subdivision (a), the members of the State Board of Equalization
30 shall not participate in any offer in compromise matters pursuant
31 to this section.

32 (f) A taxpayer that has received a compromise under paragraph
33 (2) of subdivision (c) may be required to enter into any collateral
34 agreement that is deemed necessary for the protection of the
35 interests of the state. A collateral agreement may include a
36 provision that allows the board to reestablish the liability, or any
37 portion thereof, if the taxpayer has sufficient annual income during
38 the succeeding five-year period. The board shall establish criteria
39 for determining "sufficient annual income" for purposes of this
40 subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required use fuel tax returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file use fuel tax returns, whichever period is earlier.

(h) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(i) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(j) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(l) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

1 (2) The amount of unpaid tax and related penalties, additions
2 to tax, interest, or other amounts involved.

3 (3) The amount offered.

4 (4) A summary of the reason why the compromise is in the best
5 interest of the state.

6 The public record shall not include any information that relates
7 to any trade secrets, patent, process, style of work, apparatus,
8 business secret, or organizational structure, that if disclosed, would
9 adversely affect the taxpayer or violate the confidentiality
10 provisions of Section 9255. No list shall be prepared and no
11 releases distributed by the board in connection with these
12 statements.

13 (m) Any compromise made under this section may be rescinded,
14 all compromised liabilities may be reestablished (without regard
15 to any statute of limitations that otherwise may be applicable), and
16 no portion of the amount offered in compromise refunded, if either
17 of the following occurs:

18 (1) The board determines that any person did any of the
19 following acts regarding the making of the offer:

20 (A) Concealed from the board any property belonging to the
21 estate of any taxpayer or other person liable for the tax.

22 (B) Received, withheld, destroyed, mutilated, or falsified any
23 book, document, or record, or made any false statement, relating
24 to the estate or financial condition of the taxpayer or other person
25 liable for the tax.

26 (2) The taxpayer fails to comply with any of the terms and
27 conditions relative to the offer.

28 (n) Any person who, in connection with any offer or compromise
29 under this section, or offer of that compromise to enter into that
30 agreement, willfully does either of the following shall be guilty of
31 a felony and, upon conviction, shall be fined not more than fifty
32 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
33 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
34 both, together with the costs of investigation and prosecution:

35 (1) Conceals from any officer or employee of this state any
36 property belonging to the estate of a taxpayer or other person liable
37 in respect of the tax.

38 (2) Receives, withholds, destroys, mutilates, or falsifies any
39 book, document, or record, or makes any false statement, relating

1 to the estate or financial condition of the taxpayer or other person
2 liable in respect of the tax.

3 (o) For purposes of this section, “person” means the taxpayer,
4 any member of the taxpayer’s family, any corporation, agent,
5 fiduciary, or representative of, or any other individual or entity
6 acting on behalf of, the taxpayer, or any other corporation or entity
7 owned or controlled by the taxpayer, directly or indirectly, or that
8 owns or controls the taxpayer, directly or indirectly.

9 (p) This section shall remain in effect only until January 1, 2013,
10 and as of that date is repealed, unless a later enacted statute, that
11 is enacted before January 1, 2013, deletes or extends that date.

12 *SEC. 568. Section 9278 of the Revenue and Taxation Code, as*
13 *added by Chapter 222 of the Statutes of 2008, is amended to read:*

14 9278. (a) (1) The executive director and chief counsel of the
15 board, or their delegates, may compromise any final tax liability
16 in which the reduction of tax is seven thousand five hundred dollars
17 (\$7,500) or less.

18 (2) Except as provided in paragraph (3), the board, upon
19 recommendation by its executive director and chief counsel, jointly,
20 may compromise a final tax liability involving a reduction in tax
21 in excess of seven thousand five hundred dollars (\$7,500). Any
22 recommendation for approval of an offer in compromise that is
23 not either approved or disapproved within 45 days of the
24 submission of the recommendation shall be deemed approved.

25 (3) The board, itself, may by resolution delegate to the executive
26 director and the chief counsel, jointly, the authority to compromise
27 a final tax liability in which the reduction of tax is in excess of
28 seven thousand five hundred dollars (\$7,500), but less than ten
29 thousand dollars (\$10,000).

30 (b) For purposes of this section, “a final tax liability” means
31 any final tax liability arising under Part 3 (commencing with
32 Section 8601), or related interest, additions to tax, penalties, or
33 other amounts assessed under this part.

34 (c) Offers in compromise shall be considered only for liabilities
35 that were generated from a business that has been discontinued or
36 transferred, where the taxpayer making the offer no longer has a
37 controlling interest or association with the transferred business or
38 has a controlling interest or association with a similar type of
39 business as the transferred or discontinued business.

1 (d) For amounts to be compromised under this section, the
2 following conditions shall exist:

3 (1) The taxpayer shall establish that:

4 (A) The amount offered in payment is the most that can be
5 expected to be paid or collected from the taxpayer's present assets
6 or income.

7 (B) The taxpayer does not have reasonable prospects of
8 acquiring increased income or assets that would enable the taxpayer
9 to satisfy a greater amount of the liability than the amount offered,
10 within a reasonable period of time.

11 (2) The board shall have determined that acceptance of the
12 compromise is in the best interest of the state.

13 (e) A determination by the board that it would not be in the best
14 interest of the state to accept an offer in compromise in satisfaction
15 of a final tax liability shall not be subject to administrative appeal
16 or judicial review.

17 (f) When an offer in compromise is either accepted or rejected,
18 or the terms and conditions of a compromise agreement are
19 fulfilled, the board shall notify the taxpayer in writing. In the event
20 an offer is rejected, the amount posted will either be applied to the
21 liability or refunded, at the discretion of the taxpayer.

22 (g) When more than one taxpayer is liable for the debt, such as
23 with spouses or partnerships or other business combinations, the
24 acceptance of an offer in compromise from one liable taxpayer
25 shall not relieve the other taxpayers from paying the entire liability.
26 However, the amount of the liability shall be reduced by the amount
27 of the accepted offer.

28 (h) Whenever a compromise of tax or penalties or total tax and
29 penalties in excess of five hundred dollars (\$500) is approved,
30 there shall be placed on file for at least one year in the office of
31 the executive director of the board a public record with respect to
32 that compromise. The public record shall include all of the
33 following information:

34 (1) The name of the taxpayer.

35 (2) The amount of unpaid tax and related penalties, additions
36 to tax, interest, or other amounts involved.

37 (3) The amount offered.

38 (4) A summary of the reason why the compromise is in the best
39 interest of the state.

1 The public record shall not include any information that relates
2 to any trade secrets, patent, process, style of work, apparatus,
3 business secret, or organizational structure, that if disclosed, would
4 adversely affect the taxpayer or violate the confidentiality
5 provisions of Section 9255. No list shall be prepared and no
6 releases distributed by the board in connection with these
7 statements.

8 (i) Any compromise made under this section may be rescinded,
9 all compromised liabilities may be reestablished (without regard
10 to any statute of limitations that otherwise may be applicable), and
11 no portion of the amount offered in compromise refunded, if either
12 of the following occurs:

13 (1) The board determines that any person did any of the
14 following acts regarding the making of the offer:

15 (A) Concealed from the board any property belonging to the
16 estate of any taxpayer or other person liable for the tax.

17 (B) Received, withheld, destroyed, mutilated, or falsified any
18 book, document, or record, or made any false statement, relating
19 to the estate or financial condition of the taxpayer or other person
20 liable for the tax.

21 (2) The taxpayer fails to comply with any of the terms and
22 conditions relative to the offer.

23 (j) Any person who, in connection with any offer or compromise
24 under this section, or offer of that compromise to enter into that
25 agreement, willfully does either of the following shall be guilty of
26 a felony and, upon conviction, shall be fined not more than fifty
27 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
28 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
29 both, together with the costs of investigation and prosecution:

30 (1) Conceals from any officer or employee of this state any
31 property belonging to the estate of a taxpayer or other person liable
32 in respect of the tax.

33 (2) Receives, withholds, destroys, mutilates, or falsifies any
34 book, document, or record, or makes any false statement, relating
35 to the estate or financial condition of the taxpayer or other person
36 liable in respect of the tax.

37 (k) For purposes of this section, "person" means the taxpayer,
38 any member of the taxpayer's family, any corporation, agent,
39 fiduciary, or representative of, or any other individual or entity
40 acting on behalf of, the taxpayer, or any other corporation or entity

1 owned or controlled by the taxpayer, directly or indirectly, or that
2 owns or controls the taxpayer, directly or indirectly.

3 (l) This section shall become operative on January 1, 2013.

4 SEC. 569. *Section 14251 of the Revenue and Taxation Code*
5 *is amended to read:*

6 14251. All information and records acquired by the Controller
7 or any of his or her employees are confidential in nature, and except
8 insofar as may be necessary for the enforcement of this part or as
9 may be permitted by this article, shall not be disclosed by any of
10 them.

11 Except insofar as may be necessary for the enforcement of this
12 part or as may be permitted by this article, any former or incumbent
13 Controller or employee of the Controller who discloses any
14 information acquired by any inspection or examination made
15 pursuant to this article is guilty of a felony, and upon conviction
16 shall be imprisoned ~~in the state prison~~ pursuant to subdivision (h)
17 of Section 1170 of the Penal Code.

18 SEC. 570. *Section 16910 of the Revenue and Taxation Code*
19 *is amended to read:*

20 16910. All information and records acquired by the Controller
21 or any of his employees are confidential in nature, and, except
22 insofar as may be necessary for the enforcement of this part or as
23 may be permitted by this article, shall not be disclosed by any of
24 them.

25 Except insofar as may be necessary for the enforcement of this
26 part or as may be permitted by this article, any former or incumbent
27 Controller or employee of the Controller who discloses any
28 information acquired by any inspection or examination made
29 pursuant to this article is guilty of a felony, and upon conviction
30 shall be imprisoned ~~in the state prison~~ pursuant to subdivision (h)
31 of Section 1170 of the Penal Code.

32 SEC. 571. *Section 18631.7 of the Revenue and Taxation Code*
33 *is amended to read:*

34 18631.7. (a) Any check casher engaged in the trade or business
35 of cashing checks that, in the course of that trade or business,
36 cashes checks other than one-party checks, payroll checks, or
37 government checks totaling more than ten thousand dollars
38 (\$10,000) in one transaction or two or more transactions for the
39 same person within the calendar year, shall file an informational

1 return with the Franchise Tax Board with respect to that transaction
2 or transactions.

3 (b) The return required in subdivision (a) shall be filed no later
4 than 90 days after the end of the calendar year and in the form and
5 manner prescribed by the Franchise Tax Board, and shall, at a
6 minimum, contain both of the following:

7 (1) The name, address, taxpayer identification number, and any
8 other identifying information of the person presenting the check
9 that the Franchise Tax Board deems necessary.

10 (2) The amount and date of the transaction or transactions.

11 (c) For purposes of this section the following definitions apply:

12 (1) Except as otherwise provided, “check cashier” means a check
13 cashier as defined under Section 1789.31 of the Civil Code.

14 (2) “Checks” includes warrants, drafts, money orders, and other
15 commercial paper serving the same purposes, including payroll
16 checks, government checks, and one-party checks.

17 (3) “Government check” means a check issued by a federal,
18 state, or local governmental entity and treated as a government
19 check pursuant to Section 1789.35 of the Civil Code for fee-setting
20 purposes.

21 (4) “Payroll check” means a check for wages subject to
22 withholding pursuant to Section 13020 of the Unemployment
23 Insurance Code and treated as a payroll check pursuant to Section
24 1789.35 of the Civil Code for fee-setting purposes.

25 (5) “One-party check” means a check drawn upon the maker’s
26 account and presented by the maker.

27 (d) With respect to a person who fails to file the report required
28 by this section or fails to include all of the information required
29 to be shown on that report, both of the following apply:

30 (1) Sections 6721 and 6724 of the Internal Revenue Code, as
31 those sections read on January 1, 2005, apply, except that the
32 “Franchise Tax Board” is substituted for the “secretary” in each
33 place it appears in those sections.

34 (2) If the failure was willful, the person, upon conviction, shall
35 be punished by a fine of not more than twenty-five thousand dollars
36 (\$25,000) or, in the case of a corporation, not more than one
37 hundred thousand dollars (\$100,000), by imprisonment in a county
38 jail for not more than one year, by imprisonment in the state prison
39 pursuant to subdivision (h) of Section 1170 of the Penal Code, or

1 by both that fine and imprisonment, together with the costs of
2 prosecution.

3 *SEC. 572. Section 19705 of the Revenue and Taxation Code*
4 *is amended to read:*

5 19705. (a) Any person who does any of the following shall
6 be guilty of a felony and, upon conviction, shall be fined not more
7 than fifty thousand dollars (\$50,000) or imprisoned ~~in the state~~
8 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
9 Code, or both, together with the costs of investigation and
10 prosecution:

11 (1) Willfully makes and subscribes any return, statement, or
12 other document, that contains or is verified by a written declaration
13 that it is made under penalty of perjury, and he or she does not
14 believe to be true and correct as to every material matter.

15 (2) Willfully aids or assists in, or procures, counsels, or advises
16 the preparation or presentation under, or in connection with any
17 matter arising under, the Personal Income Tax Law or the
18 Corporation Tax Law, of a return, affidavit, claim, or other
19 document, that is fraudulent or is false as to any material matter,
20 whether or not that falsity or fraud is with the knowledge or consent
21 of the person authorized or required to present that return, affidavit,
22 claim, or document.

23 (3) Simulates or falsely or fraudulently executes or signs any
24 bond, permit, entry, or other document required by the provisions
25 of the Personal Income Tax Law or the Corporation Tax Law, or
26 by any regulation pursuant to that law, or procures the same to be
27 falsely or fraudulently executed or advises, aids in, or connives at
28 that execution.

29 (4) Removes, deposits, or conceals, or is concerned in removing,
30 depositing, or concealing, any goods or commodities for or in
31 respect whereof any tax is or shall be imposed, or any property
32 upon which levy is authorized by Chapter 5 (commencing with
33 Section 19201); or Chapter 8 (commencing with Section 688.010)
34 of Division 1 of, and Chapter 5 (commencing with Section
35 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure,
36 with intent to evade or defeat the assessment or collection of any
37 tax, additions to tax, penalty, or interest imposed by Part 10
38 (commencing with Section 17001), Part 11 (commencing with
39 Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars (\$50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars (\$200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. 573. Section 19708 of the Revenue and Taxation Code is amended to read:

19708. Any person required under this part to collect, account for, and pay over any tax or amount required to be withheld who willfully fails to collect or truthfully account for and pay over the tax or amount shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be fined not more than two thousand dollars (\$2,000) or imprisoned ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or both.

1 *SEC. 574. Section 30459.15 of the Revenue and Taxation Code,*
2 *as amended by Section 3 of Chapter 222 of the Statutes of 2008,*
3 *is amended to read:*

4 30459.15. (a) (1) Beginning on January 1, 2007, the executive
5 director and chief counsel of the board, or their delegates, may
6 compromise any final tax liability where the reduction of tax is
7 seven thousand five hundred dollars (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final tax liability involving a reduction in tax
11 in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final tax liability in which the reduction of tax is in excess of
18 seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

20 (b) For purposes of this section, “a final tax liability” means
21 any final tax liability arising under Part 13 (commencing with
22 Section 30001), or related interest, additions to tax, penalties, or
23 other amounts assessed under this part.

24 (c) Offers in compromise shall be considered only for liabilities
25 that were generated by the following:

26 (1) A business that has been discontinued or transferred, where
27 the taxpayer making the offer no longer has a controlling interest
28 or association with the transferred business or has a controlling
29 interest or association with a similar type of business as the
30 transferred or discontinued business.

31 (2) A taxpayer that has purchased untaxed cigarettes or tobacco
32 products from out-of-state vendors for their own use or
33 consumption.

34 (3) Notwithstanding paragraph (1) or (2), a qualified final tax
35 liability may be compromised regardless of whether the business
36 has been discontinued or transferred or whether the taxpayer has
37 a controlling interest or association with a similar type of business
38 as the transferred or discontinued business. All other provisions
39 of this section that apply to a final tax liability shall also apply to
40 a qualified final tax liability, and no compromise shall be made

1 under this subdivision unless all other requirements of this section
2 are met. For purposes of this subdivision, a “qualified final tax
3 liability” means either of the following:

4 (A) That part of a final tax liability, including related interest,
5 additions to tax, penalties, or other amounts assessed under this
6 part, arising from a transaction or transactions in which the board
7 finds no evidence that the taxpayer collected cigarette or tobacco
8 products tax reimbursement or cigarette or tobacco products tax
9 reimbursement from the purchaser or other person and which was
10 determined against the taxpayer under Article 2 (commencing with
11 Section 30201), Article 3 (commencing with Section 30221), or
12 Article 5 (commencing with Section 30261) of Chapter 4.

13 (B) That part of a final tax liability for cigarette or tobacco
14 products tax, including related interest, additions to tax, penalties,
15 or other amounts assessed under this part, determined under Article
16 2 (commencing with Section 30201), Article 3 (commencing with
17 Section 30221), and Article 5 (commencing with Section 30261)
18 of Chapter 4 against a taxpayer who is a consumer that is not
19 required to hold a license under Article 1 (commencing with
20 Section 30140) of Chapter 3.

21 (4) A qualified final tax liability may not be compromised with
22 any of the following:

23 (A) A taxpayer who previously received a compromise under
24 paragraph (2) for a liability, or a part thereof, arising from a
25 transaction or transactions that are substantially similar to the
26 transaction or transactions attributable to the liability for which
27 the taxpayer is making the offer.

28 (B) A business that was transferred by a taxpayer who previously
29 received a compromise under paragraph (2) and who has a
30 controlling interest or association with the transferred business,
31 when the liability for which the offer is made is attributable to a
32 transaction or transactions substantially similar to the transaction
33 or transactions for which the taxpayer’s liability was previously
34 compromised.

35 (C) A business in which a taxpayer who previously received a
36 compromise under paragraph (2) has a controlling interest or
37 association with a similar type of business for which the taxpayer
38 received the compromise, when the liability of the business making
39 the offer arose from a transaction or transactions substantially

1 similar to the transaction or transactions for which the taxpayer's
2 liability was previously compromised.

3 (d) The board may, in its discretion, enter into a written
4 agreement which permits the taxpayer to pay the compromise in
5 installments for a period not exceeding one year. The agreement
6 may provide that such installments shall be paid by electronic
7 funds transfers or any other means to facilitate the payment of each
8 installment.

9 (e) Except for any recommendation for approval as specified
10 in subdivision (a), the members of the State Board of Equalization
11 shall not participate in any offer in compromise matters pursuant
12 to this section.

13 (f) A taxpayer that has received a compromise under paragraph
14 (2) of subdivision (c) may be required to enter into any collateral
15 agreement that is deemed necessary for the protection of the
16 interests of the state. A collateral agreement may include a
17 provision that allows the board to reestablish the liability, or any
18 portion thereof, if the taxpayer has sufficient annual income during
19 the succeeding five-year period. The board shall establish criteria
20 for determining "sufficient annual income" for purposes of this
21 subdivision.

22 (g) A taxpayer that has received a compromise under paragraph
23 (2) of subdivision (c) shall file and pay by the due date all
24 subsequently required cigarette and tobacco products tax reports
25 or returns for a five-year period from the date the liability is
26 compromised, or until the taxpayer is no longer required to file
27 cigarette and tobacco products tax reports or returns, whichever
28 period is earlier.

29 (h) Offers in compromise shall not be considered under the
30 following conditions:

31 (1) The taxpayer has been convicted of felony tax evasion under
32 this part during the liability period.

33 (2) The taxpayer has filed a statement under paragraph (3) of
34 subdivision (i) and continues to purchase untaxed cigarettes or
35 tobacco products from out-of-state vendors for their own use or
36 consumption.

37 (i) For amounts to be compromised under this section, the
38 following conditions shall exist:

39 (1) The taxpayer shall establish that:

1 (A) The amount offered in payment is the most that can be
2 expected to be paid or collected from the taxpayer's present assets
3 or income.

4 (B) The taxpayer does not have reasonable prospects of
5 acquiring increased income or assets that would enable the taxpayer
6 to satisfy a greater amount of the liability than the amount offered,
7 within a reasonable period of time.

8 (2) The board shall have determined that acceptance of the
9 compromise is in the best interest of the state.

10 (3) For liabilities generated in the manner described in paragraph
11 (2) of subdivision (c), the taxpayer shall file with the board a
12 statement, under penalty of perjury, that he or she will no longer
13 purchase untaxed cigarettes or tobacco products from out-of-state
14 vendors for his or her own use or consumption.

15 (j) A determination by the board that it would not be in the best
16 interest of the state to accept an offer in compromise in satisfaction
17 of a final tax liability shall not be subject to administrative appeal
18 or judicial review.

19 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
20 require a minimum offer of the unpaid tax and fraud or evasion
21 penalty.

22 (2) The minimum offer may be waived if it can be shown that
23 the taxpayer making the offer was not the person responsible for
24 perpetrating the fraud or evasion. This authorization to waive only
25 applies to partnership accounts where the intent to commit fraud
26 or evasion can be clearly attributed to a partner of the taxpayer.

27 (l) When an offer in compromise is either accepted or rejected,
28 or the terms and conditions of a compromise agreement are
29 fulfilled, the board shall notify the taxpayer in writing. In the event
30 an offer is rejected, the amount posted will either be applied to the
31 liability or refunded, at the discretion of the taxpayer.

32 (m) When more than one taxpayer is liable for the debt, such
33 as with spouses or partnerships or other business combinations,
34 including, but not limited to, taxpayers who are liable through dual
35 determination or successor's liability, the acceptance of an offer
36 in compromise from one liable taxpayer shall reduce the amount
37 of the liability of the other taxpayers by the amount of the accepted
38 offer.

39 (n) Whenever a compromise of tax or penalties or total tax and
40 penalties in excess of five hundred dollars (\$500) is approved,

1 there shall be placed on file for at least one year in the office of
2 the executive director of the board a public record with respect to
3 that compromise. The public record shall include all of the
4 following information:

5 (1) The name of the taxpayer.

6 (2) The amount of unpaid tax and related penalties, additions
7 to tax, interest, or other amounts involved.

8 (3) The amount offered.

9 (4) A summary of the reason why the compromise is in the best
10 interest of the state.

11 The public record shall not include any information that relates
12 to any trade secrets, patent, process, style of work, apparatus,
13 business secret, or organizational structure, that if disclosed, would
14 adversely affect the taxpayer or violate the confidentiality
15 provisions of Section 30455. No list shall be prepared and no
16 releases distributed by the board in connection with these
17 statements.

18 (o) Any compromise made under this section may be rescinded,
19 all compromised liabilities may be reestablished, without regard
20 to any statute of limitations that otherwise may be applicable, and
21 no portion of the amount offered in compromise refunded, if either
22 of the following occurs:

23 (1) The board determines that any person did any of the
24 following acts regarding the making of the offer:

25 (A) Concealed from the board any property belonging to the
26 estate of any taxpayer or other person liable for the tax.

27 (B) Received, withheld, destroyed, mutilated, or falsified any
28 book, document, or record or made any false statement, relating
29 to the estate or financial condition of the taxpayer or other person
30 liable for the tax.

31 (2) The taxpayer fails to comply with any of the terms and
32 conditions relative to the offer.

33 (p) Any person who, in connection with any offer or compromise
34 under this section, or offer of that compromise to enter into that
35 agreement, willfully does either of the following shall be guilty of
36 a felony and, upon conviction, shall be fined not more than fifty
37 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
38 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
39 both, together with the costs of investigation and prosecution:

1 (1) Conceals from any officer or employee of this state any
2 property belonging to the estate of a taxpayer or other person liable
3 in respect of the tax.

4 (2) Receives, withholds, destroys, mutilates, or falsifies any
5 book, document, or record, or makes any false statement, relating
6 to the estate or financial condition of the taxpayer or other person
7 liable in respect of the tax.

8 (q) For purposes of this section, “person” means the taxpayer,
9 any member of the taxpayer’s family, any corporation, agent,
10 fiduciary, or representative of, or any other individual or entity
11 acting on behalf of, the taxpayer, or any other corporation or entity
12 owned or controlled by the taxpayer, directly or indirectly, or that
13 owns or controls the taxpayer, directly or indirectly.

14 (r) This section shall remain in effect only until January 1, 2013,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2013, deletes or extends that date.

17 *SEC. 575. Section 30459.15 of the Revenue and Taxation Code,*
18 *as added by Chapter 222 of the Statutes of 2008, is amended to*
19 *read:*

20 30459.15. (a) (1) The executive director and chief counsel of
21 the board, or their delegates, may compromise any final tax liability
22 where the reduction of tax is seven thousand five hundred dollars
23 (\$7,500) or less.

24 (2) Except as provided in paragraph (3), the board, upon
25 recommendation by its executive director and chief counsel, jointly,
26 may compromise a final tax liability involving a reduction in tax
27 in excess of seven thousand five hundred dollars (\$7,500). Any
28 recommendation for approval of an offer in compromise that is
29 not either approved or disapproved within 45 days of the
30 submission of the recommendation shall be deemed approved.

31 (3) The board, itself, may by resolution delegate to the executive
32 director and the chief counsel, jointly, the authority to compromise
33 a final tax liability in which the reduction of tax is in excess of
34 seven thousand five hundred dollars (\$7,500), but less than ten
35 thousand dollars (\$10,000).

36 (b) For purposes of this section, “a final tax liability” means
37 any final tax liability arising under Part 13 (commencing with
38 Section 30001), or related interest, additions to tax, penalties, or
39 other amounts assessed under this part.

1 (c) Offers in compromise shall be considered only for liabilities
2 that were generated by the following:

3 (1) A business that has been discontinued or transferred, where
4 the taxpayer making the offer no longer has a controlling interest
5 or association with the transferred business or has a controlling
6 interest or association with a similar type of business as the
7 transferred or discontinued business.

8 (2) A taxpayer that has purchased untaxed cigarettes or tobacco
9 products from out-of-state vendors for their own use or
10 consumption.

11 (d) Offers in compromise shall not be considered under the
12 following conditions:

13 (1) The taxpayer has been convicted of felony tax evasion under
14 this part during the liability period.

15 (2) The taxpayer has filed a statement under paragraph (3) of
16 subdivision (e) and continues to purchase untaxed cigarettes or
17 tobacco products from out-of-state vendors for their own use or
18 consumption.

19 (e) For amounts to be compromised under this section, the
20 following conditions shall exist:

21 (1) The taxpayer shall establish that:

22 (A) The amount offered in payment is the most that can be
23 expected to be paid or collected from the taxpayer's present assets
24 or income.

25 (B) The taxpayer does not have reasonable prospects of
26 acquiring increased income or assets that would enable the taxpayer
27 to satisfy a greater amount of the liability than the amount offered,
28 within a reasonable period of time.

29 (2) The board shall have determined that acceptance of the
30 compromise is in the best interest of the state.

31 (3) For liabilities generated in the manner described in paragraph
32 (2) of subdivision (c), the taxpayer shall file with the board a
33 statement, under penalty of perjury, that he or she will no longer
34 purchase untaxed cigarettes or tobacco products from out-of-state
35 vendors for his or her own use or consumption.

36 (f) A determination by the board that it would not be in the best
37 interest of the state to accept an offer in compromise in satisfaction
38 of a final tax liability shall not be subject to administrative appeal
39 or judicial review.

1 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
2 require a minimum offer of the unpaid tax and fraud or evasion
3 penalty.

4 (2) The minimum offer may be waived if it can be shown that
5 the taxpayer making the offer was not the person responsible for
6 perpetrating the fraud or evasion. This authorization to waive only
7 applies to partnership accounts where the intent to commit fraud
8 or evasion can be clearly attributed to a partner of the taxpayer.

9 (h) When an offer in compromise is either accepted or rejected,
10 or the terms and conditions of a compromise agreement are
11 fulfilled, the board shall notify the taxpayer in writing. In the event
12 an offer is rejected, the amount posted will either be applied to the
13 liability or refunded, at the discretion of the taxpayer.

14 (i) When more than one taxpayer is liable for the debt, such as
15 with spouses or partnerships or other business combinations,
16 including, but not limited to, taxpayers who are liable through dual
17 determination or successor's liability, the acceptance of an offer
18 in compromise from one liable taxpayer shall reduce the amount
19 of the liability of the other taxpayers by the amount of the accepted
20 offer.

21 (j) Whenever a compromise of tax or penalties or total tax and
22 penalties in excess of five hundred dollars (\$500) is approved,
23 there shall be placed on file for at least one year in the office of
24 the executive director of the board a public record with respect to
25 that compromise. The public record shall include all of the
26 following information:

27 (1) The name of the taxpayer.

28 (2) The amount of unpaid tax and related penalties, additions
29 to tax, interest, or other amounts involved.

30 (3) The amount offered.

31 (4) A summary of the reason why the compromise is in the best
32 interest of the state.

33 The public record shall not include any information that relates
34 to any trade secrets, patent, process, style of work, apparatus,
35 business secret, or organizational structure, that if disclosed, would
36 adversely affect the taxpayer or violate the confidentiality
37 provisions of Section 30455. No list shall be prepared and no
38 releases distributed by the board in connection with these
39 statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(m) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

(n) This section shall become operative on January 1, 2013.

SEC. 576. Section 32471.5 of the Revenue and Taxation Code, as amended by Section 4 of Chapter 222 of the Statutes of 2008, is amended to read:

1 32471.5. (a) (1) Beginning on January 1, 2007, the executive
2 director and chief counsel of the board, or their delegates, may
3 compromise any final tax liability where the reduction of tax is
4 seven thousand five hundred dollars (\$7,500) or less.

5 (2) Except as provided in paragraph (3), the board, upon
6 recommendation by its executive director and chief counsel, jointly,
7 may compromise a final tax liability involving a reduction in tax
8 in excess of seven thousand five hundred dollars (\$7,500). Any
9 recommendation for approval of an offer in compromise that is
10 not either approved or disapproved within 45 days of the
11 submission of the recommendation shall be deemed approved.

12 (3) The board, itself, may by resolution delegate to the executive
13 director and the chief counsel, jointly, the authority to compromise
14 a final tax liability in which the reduction of tax is in excess of
15 seven thousand five hundred dollars (\$7,500), but less than ten
16 thousand dollars (\$10,000).

17 (b) For purposes of this section, “a final tax liability” means
18 any final tax liability arising under Part 14 (commencing with
19 Section 32001), or related interest, additions to tax, penalties, or
20 other amounts assessed under this part.

21 (c) (1) Offers in compromise shall be considered only for
22 liabilities that were generated by a business that has been
23 discontinued or transferred, where the taxpayer making the offer
24 no longer has a controlling interest or association with the
25 transferred business or has a controlling interest or association
26 with a similar type of business as the transferred or discontinued
27 business.

28 (2) Notwithstanding paragraph (1), a qualified final tax liability
29 may be compromised regardless of whether the business has been
30 discontinued or transferred or whether the taxpayer has a
31 controlling interest or association with a similar type of business
32 as the transferred or discontinued business. All other provisions
33 of this section that apply to a final tax liability shall also apply to
34 a qualified final tax liability, and no compromise shall be made
35 under this subdivision unless all other requirements of this section
36 are met. For purposes of this subdivision, a “qualified final tax
37 liability” means that part of a final tax liability, including related
38 interest, additions to tax, penalties, or other amounts assessed under
39 this part, arising from a transaction or transactions in which the
40 board finds no evidence that the taxpayer collected reimbursement

1 or tax reimbursement from the purchaser or other person and which
2 was determined against the taxpayer under Article 2 (commencing
3 with Section 32271), Article 3 (commencing with Section 32291),
4 or Article 4 (commencing with Section 32301) of Chapter 6.

5 (3) A qualified final tax liability may not be compromised with
6 any of the following:

7 (A) A taxpayer who previously received a compromise under
8 paragraph (2) for a liability, or a part thereof, arising from a
9 transaction or transactions that are substantially similar to the
10 transaction or transactions attributable to the liability for which
11 the taxpayer is making the offer.

12 (B) A business that was transferred by a taxpayer who previously
13 received a compromise under paragraph (2) and who has a
14 controlling interest or association with the transferred business,
15 when the liability for which the offer is made is attributable to a
16 transaction or transactions substantially similar to the transaction
17 or transactions for which the taxpayer's liability was previously
18 compromised.

19 (C) A business in which a taxpayer who previously received a
20 compromise under paragraph (2) has a controlling interest or
21 association with a similar type of business for which the taxpayer
22 received the compromise, when the liability of the business making
23 the offer arose from a transaction or transactions substantially
24 similar to the transaction or transactions for which the taxpayer's
25 liability was previously compromised.

26 (d) The board may, in its discretion, enter into a written
27 agreement which permits the taxpayer to pay the compromise in
28 installments for a period not exceeding one year. The agreement
29 may provide that such installments shall be paid by electronic
30 funds transfers or any other means to facilitate the payment of each
31 installment.

32 (e) Except for any recommendation for approval as specified
33 in subdivision (a), the members of the State Board of Equalization
34 shall not participate in any offer in compromise matters pursuant
35 to this section.

36 (f) A taxpayer that has received a compromise under paragraph
37 (2) of subdivision (c) may be required to enter into any collateral
38 agreement that is deemed necessary for the protection of the
39 interests of the state. A collateral agreement may include a
40 provision that allows the board to reestablish the liability, or any

1 portion thereof, if the taxpayer has sufficient annual income during
2 the succeeding five-year period. The board shall establish criteria
3 for determining “sufficient annual income” for purposes of this
4 subdivision.

5 (g) A taxpayer that has received a compromise under paragraph
6 (2) of subdivision (c) shall file and pay by the due date all
7 subsequently required tax returns and reports for a five-year period
8 from the date the liability is compromised, or until the taxpayer is
9 no longer required to file tax returns and reports, whichever period
10 is earlier.

11 (h) Offers in compromise shall not be considered where the
12 taxpayer has been convicted of felony tax evasion under this part
13 during the liability period.

14 (i) For amounts to be compromised under this section, the
15 following conditions shall exist:

16 (1) The taxpayer shall establish that:

17 (A) The amount offered in payment is the most that can be
18 expected to be paid or collected from the taxpayer’s present assets
19 or income.

20 (B) The taxpayer does not have reasonable prospects of
21 acquiring increased income or assets that would enable the taxpayer
22 to satisfy a greater amount of the liability than the amount offered,
23 within a reasonable period of time.

24 (2) The board shall have determined that acceptance of the
25 compromise is in the best interest of the state.

26 (j) A determination by the board that it would not be in the best
27 interest of the state to accept an offer in compromise in satisfaction
28 of a final tax liability shall not be subject to administrative appeal
29 or judicial review.

30 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
31 require a minimum offer of the unpaid tax and fraud or evasion
32 penalty.

33 (2) The minimum offer may be waived if it can be shown that
34 the taxpayer making the offer was not the person responsible for
35 perpetrating the fraud or evasion. This authorization to waive only
36 applies to partnership accounts where the intent to commit fraud
37 or evasion can be clearly attributed to a partner of the taxpayer.

38 (l) When an offer in compromise is either accepted or rejected,
39 or the terms and conditions of a compromise agreement are
40 fulfilled, the board shall notify the taxpayer in writing. In the event

1 an offer is rejected, the amount posted will either be applied to the
2 liability or refunded, at the discretion of the taxpayer.

3 (m) When more than one taxpayer is liable for the debt, such
4 as with spouses or partnerships or other business combinations,
5 including, but not limited to, taxpayers who are liable through dual
6 determination or successor's liability, the acceptance of an offer
7 in compromise from one liable taxpayer shall reduce the amount
8 of the liability of the other taxpayers by the amount of the accepted
9 offer.

10 (n) Whenever a compromise of tax or penalties or total tax and
11 penalties in excess of five hundred dollars (\$500) is approved,
12 there shall be placed on file for at least one year in the office of
13 the executive director of the board a public record with respect to
14 that compromise. The public record shall include all of the
15 following information:

16 (1) The name of the taxpayer.

17 (2) The amount of unpaid tax and related penalties, additions
18 to tax, interest, or other amounts involved.

19 (3) The amount offered.

20 (4) A summary of the reason why the compromise is in the best
21 interest of the state.

22 The public record shall not include any information that relates
23 to any trade secrets, patent, process, style of work, apparatus,
24 business secret, or organizational structure, that if disclosed, would
25 adversely affect the taxpayer or violate the confidentiality
26 provisions of Section 32455. No list shall be prepared and no
27 releases distributed by the board in connection with these
28 statements.

29 (o) Any compromise made under this section may be rescinded,
30 all compromised liabilities may be reestablished, without regard
31 to any statute of limitations that otherwise may be applicable, and
32 no portion of the amount offered in compromise refunded, if either
33 of the following occurs:

34 (1) The board determines that any person did any of the
35 following acts regarding the making of the offer:

36 (A) Concealed from the board any property belonging to the
37 estate of any taxpayer or other person liable for the tax.

38 (B) Received, withheld, destroyed, mutilated, or falsified any
39 book, document, or record or made any false statement, relating

1 to the estate or financial condition of the taxpayer or other person
2 liable for the tax.

3 (2) The taxpayer fails to comply with any of the terms and
4 conditions relative to the offer.

5 (p) Any person who, in connection with any offer or compromise
6 under this section, or offer of that compromise to enter into that
7 agreement, willfully does either of the following shall be guilty of
8 a felony and, upon conviction, shall be fined not more than fifty
9 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
10 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
11 both, together with the costs of investigation and prosecution:

12 (1) Conceals from any officer or employee of this state any
13 property belonging to the estate of a taxpayer or other person liable
14 in respect of the tax.

15 (2) Receives, withholds, destroys, mutilates, or falsifies any
16 book, document, or record, or makes any false statement, relating
17 to the estate or financial condition of the taxpayer or other person
18 liable in respect of the tax.

19 (q) For purposes of this section, “person” means the taxpayer,
20 any member of the taxpayer’s family, any corporation, agent,
21 fiduciary, or representative of, or any other individual or entity
22 acting on behalf of, the taxpayer, or any other corporation or entity
23 owned or controlled by the taxpayer, directly or indirectly, or that
24 owns or controls the taxpayer, directly or indirectly.

25 (r) This section shall remain in effect only until January 1, 2013,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2013, deletes or extends that date.

28 *SEC. 577. Section 32471.5 of the Revenue and Taxation Code,*
29 *as added by Chapter 222 of the Statutes of 2008, is amended to*
30 *read:*

31 32471.5. (a) (1) The executive director and chief counsel of
32 the board, or their delegates, may compromise any final tax liability
33 where the reduction of tax is seven thousand five hundred dollars
34 (\$7,500) or less.

35 (2) Except as provided in paragraph (3), the board, upon
36 recommendation by its executive director and chief counsel, jointly,
37 may compromise a final tax liability involving a reduction in tax
38 in excess of seven thousand five hundred dollars (\$7,500). Any
39 recommendation for approval of an offer in compromise that is

1 not either approved or disapproved within 45 days of the
2 submission of the recommendation shall be deemed approved.

3 (3) The board, itself, may by resolution delegate to the executive
4 director and the chief counsel, jointly, the authority to compromise
5 a final tax liability in which the reduction of tax is in excess of
6 seven thousand five hundred dollars (\$7,500), but less than ten
7 thousand dollars (\$10,000).

8 (b) For purposes of this section, “a final tax liability” means
9 any final tax liability arising under Part 14 (commencing with
10 Section 32001), or related interest, additions to tax, penalties, or
11 other amounts assessed under this part.

12 (c) Offers in compromise shall be considered only for liabilities
13 that were generated by a business that has been discontinued or
14 transferred, where the taxpayer making the offer no longer has a
15 controlling interest or association with the transferred business or
16 has a controlling interest or association with a similar type of
17 business as the transferred or discontinued business.

18 (d) Offers in compromise shall not be considered where the
19 taxpayer has been convicted of felony tax evasion under this part
20 during the liability period.

21 (e) For amounts to be compromised under this section, the
22 following conditions shall exist:

23 (1) The taxpayer shall establish that:

24 (A) The amount offered in payment is the most that can be
25 expected to be paid or collected from the taxpayer’s present assets
26 or income.

27 (B) The taxpayer does not have reasonable prospects of
28 acquiring increased income or assets that would enable the taxpayer
29 to satisfy a greater amount of the liability than the amount offered,
30 within a reasonable period of time.

31 (2) The board shall have determined that acceptance of the
32 compromise is in the best interest of the state.

33 (f) A determination by the board that it would not be in the best
34 interest of the state to accept an offer in compromise in satisfaction
35 of a final tax liability shall not be subject to administrative appeal
36 or judicial review.

37 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
38 require a minimum offer of the unpaid tax and fraud or evasion
39 penalty.

1 (2) The minimum offer may be waived if it can be shown that
2 the taxpayer making the offer was not the person responsible for
3 perpetrating the fraud or evasion. This authorization to waive only
4 applies to partnership accounts where the intent to commit fraud
5 or evasion can be clearly attributed to a partner of the taxpayer.

6 (h) When an offer in compromise is either accepted or rejected,
7 or the terms and conditions of a compromise agreement are
8 fulfilled, the board shall notify the taxpayer in writing. In the event
9 an offer is rejected, the amount posted will either be applied to the
10 liability or refunded, at the discretion of the taxpayer.

11 (i) When more than one taxpayer is liable for the debt, such as
12 with spouses or partnerships or other business combinations,
13 including, but not limited to, taxpayers who are liable through dual
14 determination or successor's liability, the acceptance of an offer
15 in compromise from one liable taxpayer shall reduce the amount
16 of the liability of the other taxpayers by the amount of the accepted
17 offer.

18 (j) Whenever a compromise of tax or penalties or total tax and
19 penalties in excess of five hundred dollars (\$500) is approved,
20 there shall be placed on file for at least one year in the office of
21 the executive director of the board a public record with respect to
22 that compromise. The public record shall include all of the
23 following information:

24 (1) The name of the taxpayer.

25 (2) The amount of unpaid tax and related penalties, additions
26 to tax, interest, or other amounts involved.

27 (3) The amount offered.

28 (4) A summary of the reason why the compromise is in the best
29 interest of the state.

30 The public record shall not include any information that relates
31 to any trade secrets, patent, process, style of work, apparatus,
32 business secret, or organizational structure, that if disclosed, would
33 adversely affect the taxpayer or violate the confidentiality
34 provisions of Section 32455. No list shall be prepared and no
35 releases distributed by the board in connection with these
36 statements.

37 (k) Any compromise made under this section may be rescinded,
38 all compromised liabilities may be reestablished, without regard
39 to any statute of limitations that otherwise may be applicable, and

1 no portion of the amount offered in compromise refunded, if either
2 of the following occurs:

3 (1) The board determines that any person did any of the
4 following acts regarding the making of the offer:

5 (A) Concealed from the board any property belonging to the
6 estate of any taxpayer or other person liable for the tax.

7 (B) Received, withheld, destroyed, mutilated, or falsified any
8 book, document, or record or made any false statement, relating
9 to the estate or financial condition of the taxpayer or other person
10 liable for the tax.

11 (2) The taxpayer fails to comply with any of the terms and
12 conditions relative to the offer.

13 (l) Any person who, in connection with any offer or compromise
14 under this section, or offer of that compromise to enter into that
15 agreement, willfully does either of the following shall be guilty of
16 a felony and, upon conviction, shall be fined not more than fifty
17 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
18 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
19 both, together with the costs of investigation and prosecution:

20 (1) Conceals from any officer or employee of this state any
21 property belonging to the estate of a taxpayer or other person liable
22 in respect of the tax.

23 (2) Receives, withholds, destroys, mutilates, or falsifies any
24 book, document, or record, or makes any false statement, relating
25 to the estate or financial condition of the taxpayer or other person
26 liable in respect of the tax.

27 (m) For purposes of this section, "person" means the taxpayer,
28 any member of the taxpayer's family, any corporation, agent,
29 fiduciary, or representative of, or any other individual or entity
30 acting on behalf of, the taxpayer, or any other corporation or entity
31 owned or controlled by the taxpayer, directly or indirectly, or that
32 owns or controls the taxpayer, directly or indirectly.

33 (n) This section shall become operative on January 1, 2013.

34 *SEC. 578. Section 32555 of the Revenue and Taxation Code*
35 *is amended to read:*

36 32555. Every person convicted of a felony for a violation of
37 any of the provisions of this part for which another punishment is
38 not specifically provided for in this part shall be punished by a
39 fine of not more than ten thousand dollars (\$10,000) or by
40 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*

1 *Section 1170 of the Penal Code*, or by both such fine and
2 imprisonment.

3 *SEC. 579. Section 38800 of the Revenue and Taxation Code*
4 *is amended to read:*

5 38800. (a) (1) Beginning on January 1, 2007, the executive
6 director and chief counsel of the board, or their delegates, may
7 compromise any final tax liability where the reduction of tax is
8 seven thousand five hundred dollars (\$7,500) or less.

9 (2) Except as provided in paragraph (3), the board, upon
10 recommendation by its executive director and chief counsel, jointly,
11 may compromise a final tax liability involving a reduction in tax
12 in excess of seven thousand five hundred dollars (\$7,500). Any
13 recommendation for approval of an offer in compromise that is
14 not either approved or disapproved within 45 days of the
15 submission of the recommendation shall be deemed approved.

16 (3) The board, itself, may by resolution delegate to the executive
17 director and the chief counsel, jointly, the authority to compromise
18 a final tax liability in which the reduction of tax is in excess of
19 seven thousand five hundred dollars (\$7,500), but less than ten
20 thousand dollars (\$10,000).

21 (b) For purposes of this section, “a final tax liability” means
22 any final tax liability arising under Part 18.5 (commencing with
23 Section 38101), or related interest, additions to tax, penalties, or
24 other amounts assessed under this part.

25 (c) Offers in compromise shall be considered only for liabilities
26 that were generated from persons who no longer harvest timber,
27 or property owners that no longer harvest their property, except
28 where the taxpayer making the offer has their primary residence
29 located on the property that generated the timber tax liability.

30 (d) Offers in compromise shall not be considered where the
31 taxpayer has been convicted of felony tax evasion under this part
32 during the liability period.

33 (e) For amounts to be compromised under this section, the
34 following conditions shall exist:

35 (1) The taxpayer shall establish that:

36 (A) The amount offered in payment is the most that can be
37 expected to be paid or collected from the taxpayer’s present assets
38 or income.

39 (B) The taxpayer does not have reasonable prospects of
40 acquiring increased income or assets that would enable the taxpayer

1 to satisfy a greater amount of the liability than the amount offered,
2 within a reasonable period of time.

3 (2) The board shall have determined that acceptance of the
4 compromise is in the best interest of the state.

5 (f) A determination by the board that it would not be in the best
6 interest of the state to accept an offer in compromise in satisfaction
7 of a final tax liability shall not be subject to administrative appeal
8 or judicial review.

9 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
10 require a minimum offer of the unpaid tax and fraud or evasion
11 penalty.

12 (2) The minimum offer may be waived if it can be shown that
13 the taxpayer making the offer was not the person responsible for
14 perpetrating the fraud or evasion. This authorization to waive only
15 applies to partnership accounts where the intent to commit fraud
16 or evasion can be clearly attributed to a partner of the taxpayer.

17 (h) When an offer in compromise is either accepted or rejected,
18 or the terms and conditions of a compromise agreement are
19 fulfilled, the board shall notify the taxpayer in writing. In the event
20 an offer is rejected, the amount posted will either be applied to the
21 liability or refunded, at the discretion of the taxpayer.

22 (i) When more than one taxpayer is liable for the debt, such as
23 with spouses or partnerships or other business combinations,
24 including, but not limited to, taxpayers who are liable through dual
25 determination or successor's liability, the acceptance of an offer
26 in compromise from one liable taxpayer shall reduce the amount
27 of the liability of the other taxpayers by the amount of the accepted
28 offer.

29 (j) Whenever a compromise of tax or penalties or total tax and
30 penalties in excess of five hundred dollars (\$500) is approved,
31 there shall be placed on file for at least one year in the office of
32 the executive director of the board a public record with respect to
33 that compromise. The public record shall include all of the
34 following information:

35 (1) The name of the taxpayer.

36 (2) The amount of unpaid tax and related penalties, additions
37 to tax, interest, or other amounts involved.

38 (3) The amount offered.

39 (4) A summary of the reason why the compromise is in the best
40 interest of the state.

1 The public record shall not include any information that relates
2 to any trade secrets, patent, process, style of work, apparatus,
3 business secret, or organizational structure, that if disclosed, would
4 adversely affect the taxpayer or violate the confidentiality
5 provisions of Section 38705. No list shall be prepared and no
6 releases distributed by the board in connection with these
7 statements.

8 (k) Any compromise made under this section may be rescinded,
9 all compromised liabilities may be reestablished, without regard
10 to any statute of limitations that otherwise may be applicable, and
11 no portion of the amount offered in compromise refunded, if either
12 of the following occurs:

13 (1) The board determines that any person did any of the
14 following acts regarding the making of the offer:

15 (A) Concealed from the board any property belonging to the
16 estate of any taxpayer or other person liable for the tax.

17 (B) Received, withheld, destroyed, mutilated, or falsified any
18 book, document, or record or made any false statement, relating
19 to the estate or financial condition of the taxpayer or other person
20 liable for the tax.

21 (2) The taxpayer fails to comply with any of the terms and
22 conditions relative to the offer.

23 (l) Any person who, in connection with any offer or compromise
24 under this section, or offer of that compromise to enter into that
25 agreement, willfully does either of the following shall be guilty of
26 a felony and, upon conviction, shall be fined not more than fifty
27 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
28 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
29 both, together with the costs of investigation and prosecution:

30 (1) Conceals from any officer or employee of this state any
31 property belonging to the estate of a taxpayer or other person liable
32 in respect of the tax.

33 (2) Receives, withholds, destroys, mutilates, or falsifies any
34 book, document, or record, or makes any false statement, relating
35 to the estate or financial condition of the taxpayer or other person
36 liable in respect of the tax.

37 (m) For purposes of this section, "person" means the taxpayer,
38 any member of the taxpayer's family, any corporation, agent,
39 fiduciary, or representative of, or any other individual or entity
40 acting on behalf of, the taxpayer, or any other corporation or entity

1 owned or controlled by the taxpayer, directly or indirectly, or that
2 owns or controls the taxpayer, directly or indirectly.

3 *SEC. 580. Section 40211.5 of the Revenue and Taxation Code*
4 *is amended to read:*

5 40211.5. (a) (1) Beginning on January 1, 2007, the executive
6 director and chief counsel of the board, or their delegates, may
7 compromise any final surcharge liability where the reduction of
8 surcharges is seven thousand five hundred dollars (\$7,500) or less.

9 (2) Except as provided in paragraph (3), the board, upon
10 recommendation by its executive director and chief counsel, jointly,
11 may compromise a final surcharge liability involving a reduction
12 in surcharges in excess of seven thousand five hundred dollars
13 (\$7,500). Any recommendation for approval of an offer in
14 compromise that is not either approved or disapproved within 45
15 days of the submission of the recommendation shall be deemed
16 approved.

17 (3) The board, itself, may by resolution delegate to the executive
18 director and the chief counsel, jointly, the authority to compromise
19 a final surcharge liability in which the reduction of surcharges is
20 in excess of seven thousand five hundred dollars (\$7,500), but less
21 than ten thousand dollars (\$10,000).

22 (b) For purposes of this section, “a final surcharge liability”
23 means any final surcharge liability arising under Part 19
24 (commencing with Section 40001), or related interest, additions
25 to surcharges, penalties, or other amounts assessed under this part.

26 (c) Offers in compromise shall be considered only for liabilities
27 that were generated from a business that has been discontinued or
28 transferred, where the surcharge payer making the offer no longer
29 has a controlling interest or association with the transferred
30 business or has a controlling interest or association with a similar
31 type of business as the transferred or discontinued business.

32 (d) Offers in compromise shall not be considered where the
33 surcharge payer has been convicted of felony tax evasion under
34 this part during the liability period.

35 (e) For amounts to be compromised under this section, the
36 following conditions shall exist:

37 (1) The surcharge payer shall establish that:

38 (A) The amount offered in payment is the most that can be
39 expected to be paid or collected from the surcharge payer’s present
40 assets or income.

1 (B) The surcharge payer does not have reasonable prospects of
2 acquiring increased income or assets that would enable the
3 surcharge payer to satisfy a greater amount of the liability than the
4 amount offered, within a reasonable period of time.

5 (2) The board shall have determined that acceptance of the
6 compromise is in the best interest of the state.

7 (f) A determination by the board that it would not be in the best
8 interest of the state to accept an offer in compromise in satisfaction
9 of a final surcharge liability shall not be subject to administrative
10 appeal or judicial review.

11 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
12 require a minimum offer of the unpaid surcharge and fraud or
13 evasion penalty.

14 (2) The minimum offer may be waived if it can be shown that
15 the surcharge payer making the offer was not the person responsible
16 for perpetrating the fraud or evasion. This authorization to waive
17 only applies to partnership accounts where the intent to commit
18 fraud or evasion can be clearly attributed to a partner of the
19 surcharge payer.

20 (h) When an offer in compromise is either accepted or rejected,
21 or the terms and conditions of a compromise agreement are
22 fulfilled, the board shall notify the surcharge payer in writing. In
23 the event an offer is rejected, the amount posted will either be
24 applied to the liability or refunded, at the discretion of the surcharge
25 payer.

26 (i) When more than one surcharge payer is liable for the debt,
27 such as with spouses or partnerships or other business
28 combinations, including, but not limited to, surcharge payers who
29 are liable through dual determination or successor's liability, the
30 acceptance of an offer in compromise from one liable surcharge
31 payer shall reduce the amount of the liability of the other surcharge
32 payers by the amount of the accepted offer.

33 (j) Whenever a compromise of surcharges or penalties or total
34 surcharges and penalties in excess of five hundred dollars (\$500)
35 is approved, there shall be placed on file for at least one year in
36 the office of the executive director of the board a public record
37 with respect to that compromise. The public record shall include
38 all of the following information:

39 (1) The name of the surcharge payer.

1 (2) The amount of unpaid surcharges and related penalties,
2 additions to surcharges, interest, or other amounts involved.

3 (3) The amount offered.

4 (4) A summary of the reason why the compromise is in the best
5 interest of the state.

6 The public record shall not include any information that relates
7 to any trade secrets, patent, process, style of work, apparatus,
8 business secret, or organizational structure, that if disclosed, would
9 adversely affect the surcharge payer or violate the confidentiality
10 provisions of Section 40175. No list shall be prepared and no
11 releases distributed by the board in connection with these
12 statements.

13 (k) Any compromise made under this section may be rescinded,
14 all compromised liabilities may be reestablished, without regard
15 to any statute of limitations that otherwise may be applicable, and
16 no portion of the amount offered in compromise refunded, if either
17 of the following occurs:

18 (1) The board determines that any person did any of the
19 following acts regarding the making of the offer:

20 (A) Concealed from the board any property belonging to the
21 estate of any surcharge payer or other person liable for the
22 surcharge.

23 (B) Received, withheld, destroyed, mutilated, or falsified any
24 book, document, or record or made any false statement, relating
25 to the estate or financial condition of the surcharge payer or other
26 person liable for the surcharge.

27 (2) The surcharge payer fails to comply with any of the terms
28 and conditions relative to the offer.

29 (l) Any person who, in connection with any offer or compromise
30 under this section, or offer of that compromise to enter into that
31 agreement, willfully does either of the following shall be guilty of
32 a felony and, upon conviction, shall be fined not more than fifty
33 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
34 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
35 both, together with the costs of investigation and prosecution:

36 (1) Conceals from any officer or employee of this state any
37 property belonging to the estate of a surcharge payer or other
38 person liable in respect of the surcharge.

39 (2) Receives, withholds, destroys, mutilates, or falsifies any
40 book, document, or record, or makes any false statement, relating

1 to the estate or financial condition of the surcharge payer or other
2 person liable in respect of the surcharge.

3 (m) For purposes of this section, “person” means the taxpayer,
4 any member of the surcharge payer’s family, any corporation,
5 agent, fiduciary, or representative of, or any other individual or
6 entity acting on behalf of, the surcharge payer, or any other
7 corporation or entity owned or controlled by the surcharge payer,
8 directly or indirectly, or that owns or controls the surcharge payer,
9 directly or indirectly.

10 *SEC. 581. Section 41171.5 of the Revenue and Taxation Code,*
11 *as amended by Section 5 of Chapter 222 of the Statutes of 2008,*
12 *is amended to read:*

13 41171.5. (a) (1) Beginning on January 1, 2007, the executive
14 director and chief counsel of the board, or their delegates, may
15 compromise any final surcharge liability where the reduction of
16 surcharges is seven thousand five hundred dollars (\$7,500) or less.

17 (2) Except as provided in paragraph (3), the board, upon
18 recommendation by its executive director and chief counsel, jointly,
19 may compromise a final surcharge liability involving a reduction
20 in surcharges in excess of seven thousand five hundred dollars
21 (\$7,500). Any recommendation for approval of an offer in
22 compromise that is not either approved or disapproved within 45
23 days of the submission of the recommendation shall be deemed
24 approved.

25 (3) The board, itself, may by resolution delegate to the executive
26 director and the chief counsel, jointly, the authority to compromise
27 a final surcharge liability in which the reduction of surcharges is
28 in excess of seven thousand five hundred dollars (\$7,500), but less
29 than ten thousand dollars (\$10,000).

30 (b) For purposes of this section, “a final surcharge liability”
31 means any final surcharge liability arising under Part 20
32 (commencing with Section 41001), or related interest, additions
33 to surcharges, penalties, or other amounts assessed under this part.

34 (c) (1) Offers in compromise shall be considered only for
35 liabilities that were generated from a business that has been
36 discontinued or transferred, where the surcharge payer making the
37 offer no longer has a controlling interest or association with the
38 transferred business or has a controlling interest or association
39 with a similar type of business as the transferred or discontinued
40 business.

(2) Notwithstanding paragraph (1), a qualified final surcharge liability may be compromised regardless of whether the business has been discontinued or transferred or whether the surcharge payer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final surcharge liability shall also apply to a qualified final surcharge liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final surcharge liability” means either of the following:

(A) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board finds no evidence that the service supplier collected the surcharge from the service user or other person and which was determined against the service supplier under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), or Article 5 (commencing with Section 41085) of Chapter 4.

(B) That part of a final surcharge liability, including related interest, additions to surcharge, penalties, or other amounts assessed under this part, determined under Article 3 (commencing with Section 41070), Article 4 (commencing with Section 41080), and Article 5 (commencing with Section 41085) of Chapter 4 against a service user who is a consumer that is not required to register with the board under Article 3 (commencing with section 41040) of Chapter 2.

(3) A qualified final surcharge liability may not be compromised with any of the following:

(A) A surcharge payer who previously received a compromise under paragraph (2) for a liability, or a part thereof, arising from a transaction or transactions that are substantially similar to the transaction or transactions attributable to the liability for which the surcharge payer is making the offer.

(B) A business that was transferred by a surcharge payer who previously received a compromise under paragraph (2) and who has a controlling interest or association with the transferred business, when the liability for which the offer is made is attributable to a transaction or transactions substantially similar to

1 the transaction or transactions for which the surcharge payer's
2 liability was previously compromised.

3 (C) A business in which a surcharge payer who previously
4 received a compromise under paragraph (2) has a controlling
5 interest or association with a similar type of business for which
6 the surcharge payer received the compromise, when the liability
7 of the business making the offer arose from a transaction or
8 transactions substantially similar to the transaction or transactions
9 for which the surcharge payer's liability was previously
10 compromised.

11 (d) The board may, in its discretion, enter into a written
12 agreement which permits the surcharge payer to pay the
13 compromise in installments for a period not exceeding one year.
14 The agreement may provide that such installments shall be paid
15 by electronic funds transfers or any other means to facilitate the
16 payment of each installment.

17 (e) Except for any recommendation for approval as specified
18 in subdivision (a), the members of the State Board of Equalization
19 shall not participate in any offer in compromise matters pursuant
20 to this section.

21 (f) A surcharge payer that has received a compromise under
22 paragraph (2) of subdivision (c) may be required to enter into any
23 collateral agreement that is deemed necessary for the protection
24 of the interests of the state. A collateral agreement may include a
25 provision that allows the board to reestablish the liability, or any
26 portion thereof, if the surcharge payer has sufficient annual income
27 during the succeeding five-year period. The board shall establish
28 criteria for determining "sufficient annual income" for purposes
29 of this subdivision.

30 (g) A surcharge payer that has received a compromise under
31 paragraph (2) of subdivision (c) shall file and pay by the due date
32 all subsequently required emergency telephone users surcharge
33 returns for a five-year period from the date the liability is
34 compromised, or until the surcharge payer is no longer required
35 to file emergency telephone users surcharge returns, whichever
36 period is earlier.

37 (h) Offers in compromise shall not be considered where the
38 surcharge payer has been convicted of felony tax evasion under
39 this part during the liability period.

1 (i) For amounts to be compromised under this section, the
2 following conditions shall exist:

3 (1) The surcharge payer shall establish that:

4 (A) The amount offered in payment is the most that can be
5 expected to be paid or collected from the surcharge payer's present
6 assets or income.

7 (B) The surcharge payer does not have reasonable prospects of
8 acquiring increased income or assets that would enable the
9 surcharge payer to satisfy a greater amount of the liability than the
10 amount offered, within a reasonable period of time.

11 (2) The board shall have determined that acceptance of the
12 compromise is in the best interest of the state.

13 (j) A determination by the board that it would not be in the best
14 interest of the state to accept an offer in compromise in satisfaction
15 of a final surcharge liability shall not be subject to administrative
16 appeal or judicial review.

17 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
18 require a minimum offer of the unpaid surcharge and fraud or
19 evasion penalty.

20 (2) The minimum offer may be waived if it can be shown that
21 the surcharge payer making the offer was not the person responsible
22 for perpetrating the fraud or evasion. This authorization to waive
23 only applies to partnership accounts where the intent to commit
24 fraud or evasion can be clearly attributed to a partner of the
25 surcharge payer.

26 (l) When an offer in compromise is either accepted or rejected,
27 or the terms and conditions of a compromise agreement are
28 fulfilled, the board shall notify the surcharge payer in writing. In
29 the event an offer is rejected, the amount posted will either be
30 applied to the liability or refunded, at the discretion of the surcharge
31 payer.

32 (m) When more than one surcharge payer is liable for the debt,
33 such as with spouses or partnerships or other business
34 combinations, including, but not limited to, surcharge payers who
35 are liable through dual determination or successor's liability, the
36 acceptance of an offer in compromise from one liable surcharge
37 payer shall reduce the amount of the liability of the other surcharge
38 payers by the amount of the accepted offer.

39 (n) Whenever a compromise of surcharges or penalties or total
40 surcharges and penalties in excess of five hundred dollars (\$500)

1 is approved, there shall be placed on file for at least one year in
2 the office of the executive director of the board a public record
3 with respect to that compromise. The public record shall include
4 all of the following information:

- 5 (1) The name of the surcharge payer.
- 6 (2) The amount of unpaid surcharges and related penalties,
7 additions to surcharges, interest, or other amounts involved.
- 8 (3) The amount offered.
- 9 (4) A summary of the reason why the compromise is in the best
10 interest of the state.

11 The public record shall not include any information that relates
12 to any trade secrets, patent, process, style of work, apparatus,
13 business secret, or organizational structure, that if disclosed, would
14 adversely affect the surcharge payer or violate the confidentiality
15 provisions of Section 41131. No list shall be prepared and no
16 releases distributed by the board in connection with these
17 statements.

18 (o) Any compromise made under this section may be rescinded,
19 all compromised liabilities may be reestablished, without regard
20 to any statute of limitations that otherwise may be applicable, and
21 no portion of the amount offered in compromise refunded, if either
22 of the following occurs:

23 (1) The board determines that any person did any of the
24 following acts regarding the making of the offer:

25 (A) Concealed from the board any property belonging to the
26 estate of any surcharge payer or other person liable for the
27 surcharge.

28 (B) Received, withheld, destroyed, mutilated, or falsified any
29 book, document, or record or made any false statement, relating
30 to the estate or financial condition of the surcharge payer or other
31 person liable for the surcharge.

32 (2) The surcharge payer fails to comply with any of the terms
33 and conditions relative to the offer.

34 (p) Any person who, in connection with any offer or compromise
35 under this section, or offer of that compromise to enter into that
36 agreement, willfully does either of the following shall be guilty of
37 a felony and, upon conviction, shall be fined not more than fifty
38 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
39 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
40 both, together with the costs of investigation and prosecution:

1 (1) Conceals from any officer or employee of this state any
2 property belonging to the estate of a surcharge payer or other
3 person liable in respect of the surcharge.

4 (2) Receives, withholds, destroys, mutilates, or falsifies any
5 book, document, or record, or makes any false statement, relating
6 to the estate or financial condition of the surcharge payer or other
7 person liable in respect of the surcharge.

8 (q) For purposes of this section, “person” means the surcharge
9 payer, any member of the surcharge payer’s family, any
10 corporation, agent, fiduciary, or representative of, or any other
11 individual or entity acting on behalf of, the surcharge payer, or
12 any other corporation or entity owned or controlled by the
13 surcharge payer, directly or indirectly, or that owns or controls the
14 surcharge payer, directly or indirectly.

15 (r) This section shall remain in effect only until January 1, 2013,
16 and as of that date is repealed, unless a later enacted statute, that
17 is enacted before January 1, 2013, deletes or extends that date.

18 *SEC. 582. Section 41171.5 of the Revenue and Taxation Code,*
19 *as added by Chapter 222 of the Statutes of 2008, is amended to*
20 *read:*

21 41171.5. (a) (1) The executive director and chief counsel of
22 the board, or their delegates, may compromise any final surcharge
23 liability where the reduction of surcharges is seven thousand five
24 hundred dollars (\$7,500) or less.

25 (2) Except as provided in paragraph (3), the board, upon
26 recommendation by its executive director and chief counsel, jointly,
27 may compromise a final surcharge liability involving a reduction
28 in surcharges in excess of seven thousand five hundred dollars
29 (\$7,500). Any recommendation for approval of an offer in
30 compromise that is not either approved or disapproved within 45
31 days of the submission of the recommendation shall be deemed
32 approved.

33 (3) The board, itself, may by resolution delegate to the executive
34 director and the chief counsel, jointly, the authority to compromise
35 a final surcharge liability in which the reduction of surcharges is
36 in excess of seven thousand five hundred dollars (\$7,500), but less
37 than ten thousand dollars (\$10,000).

38 (b) For purposes of this section, “a final surcharge liability”
39 means any final surcharge liability arising under Part 20

1 (commencing with Section 41001), or related interest, additions
2 to surcharges, penalties, or other amounts assessed under this part.

3 (c) Offers in compromise shall be considered only for liabilities
4 that were generated from a business that has been discontinued or
5 transferred, where the surcharge payer making the offer no longer
6 has a controlling interest or association with the transferred
7 business or has a controlling interest or association with a similar
8 type of business as the transferred or discontinued business.

9 (d) Offers in compromise shall not be considered where the
10 surcharge payer has been convicted of felony tax evasion under
11 this part during the liability period.

12 (e) For amounts to be compromised under this section, the
13 following conditions shall exist:

14 (1) The surcharge payer shall establish that:

15 (A) The amount offered in payment is the most that can be
16 expected to be paid or collected from the surcharge payer's present
17 assets or income.

18 (B) The surcharge payer does not have reasonable prospects of
19 acquiring increased income or assets that would enable the
20 surcharge payer to satisfy a greater amount of the liability than the
21 amount offered, within a reasonable period of time.

22 (2) The board shall have determined that acceptance of the
23 compromise is in the best interest of the state.

24 (f) A determination by the board that it would not be in the best
25 interest of the state to accept an offer in compromise in satisfaction
26 of a final surcharge liability shall not be subject to administrative
27 appeal or judicial review.

28 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
29 require a minimum offer of the unpaid surcharge and fraud or
30 evasion penalty.

31 (2) The minimum offer may be waived if it can be shown that
32 the surcharge payer making the offer was not the person responsible
33 for perpetrating the fraud or evasion. This authorization to waive
34 only applies to partnership accounts where the intent to commit
35 fraud or evasion can be clearly attributed to a partner of the
36 surcharge payer.

37 (h) When an offer in compromise is either accepted or rejected,
38 or the terms and conditions of a compromise agreement are
39 fulfilled, the board shall notify the surcharge payer in writing. In
40 the event an offer is rejected, the amount posted will either be

1 applied to the liability or refunded, at the discretion of the surcharge
2 payer.

3 (i) When more than one surcharge payer is liable for the debt,
4 such as with spouses or partnerships or other business
5 combinations, including, but not limited to, surcharge payers who
6 are liable through dual determination or successor's liability, the
7 acceptance of an offer in compromise from one liable surcharge
8 payer shall reduce the amount of the liability of the other surcharge
9 payers by the amount of the accepted offer.

10 (j) Whenever a compromise of surcharges or penalties or total
11 surcharges and penalties in excess of five hundred dollars (\$500)
12 is approved, there shall be placed on file for at least one year in
13 the office of the executive director of the board a public record
14 with respect to that compromise. The public record shall include
15 all of the following information:

16 (1) The name of the surcharge payer.

17 (2) The amount of unpaid surcharges and related penalties,
18 additions to surcharges, interest, or other amounts involved.

19 (3) The amount offered.

20 (4) A summary of the reason why the compromise is in the best
21 interest of the state.

22 The public record shall not include any information that relates
23 to any trade secrets, patent, process, style of work, apparatus,
24 business secret, or organizational structure, that if disclosed, would
25 adversely affect the surcharge payer or violate the confidentiality
26 provisions of Section 41131. No list shall be prepared and no
27 releases distributed by the board in connection with these
28 statements.

29 (k) Any compromise made under this section may be rescinded,
30 all compromised liabilities may be reestablished, without regard
31 to any statute of limitations that otherwise may be applicable, and
32 no portion of the amount offered in compromise refunded, if either
33 of the following occurs:

34 (1) The board determines that any person did any of the
35 following acts regarding the making of the offer:

36 (A) Concealed from the board any property belonging to the
37 estate of any surcharge payer or other person liable for the
38 surcharge.

39 (B) Received, withheld, destroyed, mutilated, or falsified any
40 book, document, or record or made any false statement, relating

1 to the estate or financial condition of the surcharge payer or other
2 person liable for the surcharge.

3 (2) The surcharge payer fails to comply with any of the terms
4 and conditions relative to the offer.

5 (l) Any person who, in connection with any offer or compromise
6 under this section, or offer of that compromise to enter into that
7 agreement, willfully does either of the following shall be guilty of
8 a felony and, upon conviction, shall be fined not more than fifty
9 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
10 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
11 both, together with the costs of investigation and prosecution:

12 (1) Conceals from any officer or employee of this state any
13 property belonging to the estate of a surcharge payer or other
14 person liable in respect of the surcharge.

15 (2) Receives, withholds, destroys, mutilates, or falsifies any
16 book, document, or record, or makes any false statement, relating
17 to the estate or financial condition of the surcharge payer or other
18 person liable in respect of the surcharge.

19 (m) For purposes of this section, “person” means the surcharge
20 payer, any member of the surcharge payer’s family, any
21 corporation, agent, fiduciary, or representative of, or any other
22 individual or entity acting on behalf of, the surcharge payer, or
23 any other corporation or entity owned or controlled by the
24 surcharge payer, directly or indirectly, or that owns or controls the
25 surcharge payer, directly or indirectly.

26 (n) This section shall become operative on January 1, 2013.

27 *SEC. 583. Section 43522.5 of the Revenue and Taxation Code*
28 *is amended to read:*

29 43522.5. (a) (1) Beginning on January 1, 2007, the executive
30 director and chief counsel of the board, or their delegates, may
31 compromise any final tax liability where the reduction of tax is
32 seven thousand five hundred dollars (\$7,500) or less.

33 (2) Except as provided in paragraph (3), the board, upon
34 recommendation by its executive director and chief counsel, jointly,
35 may compromise a final tax liability involving a reduction in tax
36 in excess of seven thousand five hundred dollars (\$7,500). Any
37 recommendation for approval of an offer in compromise that is
38 not either approved or disapproved within 45 days of the
39 submission of the recommendation shall be deemed approved.

1 (3) The board, itself, may by resolution delegate to the executive
2 director and the chief counsel, jointly, the authority to compromise
3 a final tax liability in which the reduction of tax is in excess of
4 seven thousand five hundred dollars (\$7,500), but less than ten
5 thousand dollars (\$10,000).

6 (b) For purposes of this section, “a final tax liability” means
7 any final tax liability arising under Part 22 (commencing with
8 Section 43001), or related interest, additions to tax, penalties, or
9 other amounts assessed under this part.

10 (c) Offers in compromise shall be considered only for liabilities
11 that were generated from a business that has been discontinued or
12 transferred, where the taxpayer making the offer no longer has a
13 controlling interest or association with the transferred business or
14 has a controlling interest or association with a similar type of
15 business as the transferred or discontinued business.

16 (d) Offers in compromise shall not be considered where the
17 taxpayer has been convicted of felony tax evasion under this part
18 during the liability period.

19 (e) For amounts to be compromised under this section, the
20 following conditions shall exist:

21 (1) The taxpayer shall establish that:

22 (A) The amount offered in payment is the most that can be
23 expected to be paid or collected from the taxpayer’s present assets
24 or income.

25 (B) The taxpayer does not have reasonable prospects of
26 acquiring increased income or assets that would enable the taxpayer
27 to satisfy a greater amount of the liability than the amount offered,
28 within a reasonable period of time.

29 (2) The board shall have determined that acceptance of the
30 compromise is in the best interest of the state.

31 (f) A determination by the board that it would not be in the best
32 interest of the state to accept an offer in compromise in satisfaction
33 of a final tax liability shall not be subject to administrative appeal
34 or judicial review.

35 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
36 require a minimum offer of the unpaid tax and fraud or evasion
37 penalty.

38 (2) The minimum offer may be waived if it can be shown that
39 the taxpayer making the offer was not the person responsible for
40 perpetrating the fraud or evasion. This authorization to waive only

1 applies to partnership accounts where the intent to commit fraud
2 or evasion can be clearly attributed to a partner of the taxpayer.

3 (h) When an offer in compromise is either accepted or rejected,
4 or the terms and conditions of a compromise agreement are
5 fulfilled, the board shall notify the taxpayer in writing. In the event
6 an offer is rejected, the amount posted will either be applied to the
7 liability or refunded, at the discretion of the taxpayer.

8 (i) When more than one taxpayer is liable for the debt, such as
9 with spouses or partnerships or other business combinations,
10 including, but not limited to, taxpayers who are liable through dual
11 determination or successor's liability, the acceptance of an offer
12 in compromise from one liable taxpayer shall reduce the amount
13 of the liability of the other taxpayers by the amount of the accepted
14 offer.

15 (j) Whenever a compromise of tax or penalties or total tax and
16 penalties in excess of five hundred dollars (\$500) is approved,
17 there shall be placed on file for at least one year in the office of
18 the executive director of the board a public record with respect to
19 that compromise. The public record shall include all of the
20 following information:

21 (1) The name of the taxpayer.

22 (2) The amount of unpaid tax and related penalties, additions
23 to tax, interest, or other amounts involved.

24 (3) The amount offered.

25 (4) A summary of the reason why the compromise is in the best
26 interest of the state.

27 The public record shall not include any information that relates
28 to any trade secrets, patent, process, style of work, apparatus,
29 business secret, or organizational structure, that if disclosed, would
30 adversely affect the taxpayer or violate the confidentiality
31 provisions of Section 43651. No list shall be prepared and no
32 releases distributed by the board in connection with these
33 statements.

34 (k) Any compromise made under this section may be rescinded,
35 all compromised liabilities may be reestablished, without regard
36 to any statute of limitations that otherwise may be applicable, and
37 no portion of the amount offered in compromise refunded, if either
38 of the following occurs:

39 (1) The board determines that any person did any of the
40 following acts regarding the making of the offer:

1 (A) Concealed from the board any property belonging to the
2 estate of any taxpayer or other person liable for the tax.

3 (B) Received, withheld, destroyed, mutilated, or falsified any
4 book, document, or record or made any false statement, relating
5 to the estate or financial condition of the taxpayer or other person
6 liable for the tax.

7 (2) The taxpayer fails to comply with any of the terms and
8 conditions relative to the offer.

9 (l) Any person who, in connection with any offer or compromise
10 under this section, or offer of that compromise to enter into that
11 agreement, willfully does either of the following shall be guilty of
12 a felony and, upon conviction, shall be fined not more than fifty
13 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
14 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
15 both, together with the costs of investigation and prosecution:

16 (1) Conceals from any officer or employee of this state any
17 property belonging to the estate of a taxpayer or other person liable
18 in respect of the tax.

19 (2) Receives, withholds, destroys, mutilates, or falsifies any
20 book, document, or record, or makes any false statement, relating
21 to the estate or financial condition of the taxpayer or other person
22 liable in respect of the tax.

23 (m) For purposes of this section, “person” means the taxpayer,
24 any member of the taxpayer’s family, any corporation, agent,
25 fiduciary, or representative of, or any other individual or entity
26 acting on behalf of, the taxpayer, or any other corporation or entity
27 owned or controlled by the taxpayer, directly or indirectly, or that
28 owns or controls the taxpayer, directly or indirectly.

29 *SEC. 584. Section 43606 of the Revenue and Taxation Code*
30 *is amended to read:*

31 43606. Every person convicted of a felony for a violation of
32 any of the provisions of this part for which another punishment is
33 not specifically provided for in this part shall be punished by a
34 fine of not more than five thousand dollars (\$5,000), by
35 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
36 *Section 1170 of the Penal Code*, or by both that fine and
37 imprisonment.

38 *SEC. 585. Section 45867.5 of the Revenue and Taxation Code*
39 *is amended to read:*

1 45867.5. (a) (1) Beginning on January 1, 2007, the executive
2 director and chief counsel of the board, or their delegates, may
3 compromise any final fee liability where the reduction of fees is
4 seven thousand five hundred dollars (\$7,500) or less.

5 (2) Except as provided in paragraph (3), the board, upon
6 recommendation by its executive director and chief counsel, jointly,
7 may compromise a final fee liability involving a reduction in fees
8 in excess of seven thousand five hundred dollars (\$7,500). Any
9 recommendation for approval of an offer in compromise that is
10 not either approved or disapproved within 45 days of the
11 submission of the recommendation shall be deemed approved.

12 (3) The board, itself, may by resolution delegate to the executive
13 director and the chief counsel, jointly, the authority to compromise
14 a final fee liability in which the reduction of fees is in excess of
15 seven thousand five hundred dollars (\$7,500), but less than ten
16 thousand dollars (\$10,000).

17 (b) For purposes of this section, “a final fee liability” means
18 any final fee liability arising under Part 23 (commencing with
19 Section 45001), or related interest, additions to fees, penalties, or
20 other amounts assessed under this part.

21 (c) Offers in compromise shall be considered only for liabilities
22 that were generated from a business that has been discontinued or
23 transferred, where the fee payer making the offer no longer has a
24 controlling interest or association with the transferred business or
25 has a controlling interest or association with a similar type of
26 business as the transferred or discontinued business.

27 (d) Offers in compromise shall not be considered where the fee
28 payer has been convicted of felony tax evasion under this part
29 during the liability period.

30 (e) For amounts to be compromised under this section, the
31 following conditions shall exist:

32 (1) The fee payer shall establish that:

33 (A) The amount offered in payment is the most that can be
34 expected to be paid or collected from the fee payer’s present assets
35 or income.

36 (B) The fee payer does not have reasonable prospects of
37 acquiring increased income or assets that would enable the fee
38 payer to satisfy a greater amount of the liability than the amount
39 offered, within a reasonable period of time.

1 (2) The board shall have determined that acceptance of the
2 compromise is in the best interest of the state.

3 (f) A determination by the board that it would not be in the best
4 interest of the state to accept an offer in compromise in satisfaction
5 of a final fee liability shall not be subject to administrative appeal
6 or judicial review.

7 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
8 require a minimum offer of the unpaid fee and fraud or evasion
9 penalty.

10 (2) The minimum offer may be waived if it can be shown that
11 the fee payer making the offer was not the person responsible for
12 perpetrating the fraud or evasion. This authorization to waive only
13 applies to partnership accounts where the intent to commit fraud
14 or evasion can be clearly attributed to a partner of the fee payer.

15 (h) When an offer in compromise is either accepted or rejected,
16 or the terms and conditions of a compromise agreement are
17 fulfilled, the board shall notify the fee payer in writing. In the event
18 an offer is rejected, the amount posted will either be applied to the
19 liability or refunded, at the discretion of the fee payer.

20 (i) When more than one fee payer is liable for the debt, such as
21 with spouses or partnerships or other business combinations,
22 including, but not limited to, fee payers who are liable through
23 dual determination or successor's liability, the acceptance of an
24 offer in compromise from one liable fee payer shall reduce the
25 amount of the liability of the other fee payers by the amount of
26 the accepted offer.

27 (j) Whenever a compromise of fees or penalties or total fees
28 and penalties in excess of five hundred dollars (\$500) is approved,
29 there shall be placed on file for at least one year in the office of
30 the executive director of the board a public record with respect to
31 that compromise. The public record shall include all of the
32 following information:

33 (1) The name of the fee payer.

34 (2) The amount of unpaid fees and related penalties, additions
35 to fee, interest, or other amounts involved.

36 (3) The amount offered.

37 (4) A summary of the reason why the compromise is in the best
38 interest of the state.

39 The public record shall not include any information that relates
40 to any trade secrets, patent, process, style of work, apparatus,

1 business secret, or organizational structure, that if disclosed, would
2 adversely affect the fee payer or violate the confidentiality
3 provisions of Section 45855. No list shall be prepared and no
4 releases distributed by the board in connection with these
5 statements.

6 (k) Any compromise made under this section may be rescinded,
7 all compromised liabilities may be reestablished, without regard
8 to any statute of limitations that otherwise may be applicable, and
9 no portion of the amount offered in compromise refunded, if either
10 of the following occurs:

11 (1) The board determines that any person did any of the
12 following acts regarding the making of the offer:

13 (A) Concealed from the board any property belonging to the
14 estate of any fee payer or other person liable for the fee.

15 (B) Received, withheld, destroyed, mutilated, or falsified any
16 book, document, or record or made any false statement, relating
17 to the estate or financial condition of the fee payer or other person
18 liable for the fee.

19 (2) The fee payer fails to comply with any of the terms and
20 conditions relative to the offer.

21 (l) Any person who, in connection with any offer or compromise
22 under this section, or offer of that compromise to enter into that
23 agreement, willfully does either of the following shall be guilty of
24 a felony and, upon conviction, shall be fined not more than fifty
25 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
26 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
27 both, together with the costs of investigation and prosecution:

28 (1) Conceals from any officer or employee of this state any
29 property belonging to the estate of a fee payer or other person
30 liable in respect of the fee.

31 (2) Receives, withholds, destroys, mutilates, or falsifies any
32 book, document, or record, or makes any false statement, relating
33 to the estate or financial condition of the fee payer or other person
34 liable in respect of the fee.

35 (m) For purposes of this section, “person” means the fee payer,
36 any member of the fee payer’s family, any corporation, agent,
37 fiduciary, or representative of, or any other individual or entity
38 acting on behalf of, the fee payer, or any other corporation or entity
39 owned or controlled by the fee payer, directly or indirectly, or that
40 owns or controls the fee payer, directly or indirectly.

1 *SEC. 586. Section 45955 of the Revenue and Taxation Code*
2 *is amended to read:*

3 45955. Every person convicted of a felony for a violation of
4 any provision of this part for which another punishment is not
5 specifically provided for in this part shall be punished by a fine of
6 not more than five thousand dollars (\$5,000), by imprisonment ~~in~~
7 ~~the state prison pursuant to subdivision (h) of Section 1170 of the~~
8 *Penal Code*, or by both that fine and imprisonment.

9 *SEC. 587. Section 46628 of the Revenue and Taxation Code,*
10 *as amended by Section 6 of Chapter 222 of the Statutes of 2008,*
11 *is amended to read:*

12 46628. (a) (1) Beginning on January 1, 2007, the executive
13 director and chief counsel of the board, or their delegates, may
14 compromise any final fee liability where the reduction of fees is
15 seven thousand five hundred dollars (\$7,500) or less.

16 (2) Except as provided in paragraph (3), the board, upon
17 recommendation by its executive director and chief counsel, jointly,
18 may compromise a final fee liability involving a reduction in fees
19 in excess of seven thousand five hundred dollars (\$7,500). Any
20 recommendation for approval of an offer in compromise that is
21 not either approved or disapproved within 45 days of the
22 submission of the recommendation shall be deemed approved.

23 (3) The board, itself, may by resolution delegate to the executive
24 director and the chief counsel, jointly, the authority to compromise
25 a final fee liability in which the reduction of fees is in excess of
26 seven thousand five hundred dollars (\$7,500), but less than ten
27 thousand dollars (\$10,000).

28 (b) For purposes of this section, “a final fee liability” means
29 any final fee liability arising under Part 24 (commencing with
30 Section 46001), or related interest, additions to fees, penalties, or
31 other amounts assessed under this part.

32 (c) (1) Offers in compromise shall be considered only for
33 liabilities that were generated from a business that has been
34 discontinued or transferred, where the feepayer making the offer
35 no longer has a controlling interest or association with the
36 transferred business or has a controlling interest or association
37 with a similar type of business as the transferred or discontinued
38 business.

39 (2) Notwithstanding paragraph (1), a qualified final fee liability
40 may be compromised regardless of whether the business has been

1 discontinued or transferred or whether the feepayer has a
2 controlling interest or association with a similar type of business
3 as the transferred or discontinued business. All other provisions
4 of this section that apply to a final fee liability shall also apply to
5 a qualified final fee liability, and no compromise shall be made
6 under this subdivision unless all other requirements of this section
7 are met. For purposes of this subdivision, a “qualified final fee
8 liability” means any of the following:

9 (A) That part of a final fee liability, including related interest,
10 additions to fee, penalties, or other amounts assessed under this
11 part, arising from a transaction or transactions in which the board
12 finds no evidence that the marine terminal operator or operator of
13 a pipeline collected the oil spill prevention and administration fee
14 from the owner of the petroleum products or crude oil or other
15 person and which was determined against the feepayer under
16 Article 2 (commencing with Section 46201), Article 3
17 (commencing with Section 46251), or Article 5 (commencing with
18 Section 46351) of Chapter 3.

19 (B) A final fee liability, including related interest, additions to
20 fee, penalties, or other amounts assessed under this part, arising
21 under Article 6 (commencing with Section 46451) of Chapter 4.

22 (C) That part of a final fee liability, including related interest,
23 additions to fee, penalties, or other amounts assessed under this
24 part, determined under Article 2 (commencing with Section 46201),
25 Article 3 (commencing with Section 46251), and Article 5
26 (commencing with Section 46351) of Chapter 3 against an owner
27 of crude oil or petroleum products that is not required to register
28 with the board under Article 2 (commencing with section 46101)
29 of Chapter 2.

30 (3) A qualified final fee liability may not be compromised with
31 any of the following:

32 (A) A feepayer who previously received a compromise under
33 paragraph (2) for a liability, or a part thereof, arising from a
34 transaction or transactions that are substantially similar to the
35 transaction or transactions attributable to the liability for which
36 the feepayer is making the offer.

37 (B) A business that was transferred by a feepayer who previously
38 received a compromise under paragraph (2) and who has a
39 controlling interest or association with the transferred business,
40 when the liability for which the offer is made is attributable to a

1 transaction or transactions substantially similar to the transaction
2 or transactions for which the feepayer's liability was previously
3 compromised.

4 (C) A business in which a feepayer who previously received a
5 compromise under paragraph (2) has a controlling interest or
6 association with a similar type of business for which the feepayer
7 received the compromise, when the liability of the business making
8 the offer arose from a transaction or transactions substantially
9 similar to the transaction or transactions for which the feepayer's
10 liability was previously compromised.

11 (d) The board may, in its discretion, enter into a written
12 agreement which permits the feepayer to pay the compromise in
13 installments for a period not exceeding one year. The agreement
14 may provide that such installments shall be paid by electronic
15 funds transfers or any other means to facilitate the payment of each
16 installment.

17 (e) Except for any recommendation for approval as specified
18 in subdivision (a), the members of the State Board of Equalization
19 shall not participate in any offer in compromise matters pursuant
20 to this section.

21 (f) A feepayer that has received a compromise under paragraph
22 (2) of subdivision (c) may be required to enter into any collateral
23 agreement that is deemed necessary for the protection of the
24 interests of the state. A collateral agreement may include a
25 provision that allows the board to reestablish the liability, or any
26 portion thereof, if the feepayer has sufficient annual income during
27 the succeeding five-year period. The board shall establish criteria
28 for determining "sufficient annual income" for purposes of this
29 subdivision.

30 (g) A feepayer that has received a compromise under paragraph
31 (2) of subdivision (c) shall file and pay by the due date all
32 subsequently required oil spill prevention and administration fee
33 returns for a five-year period from the date the liability is
34 compromised, or until the feepayer is no longer required to file oil
35 spill prevention and administration fee returns, whichever period
36 is earlier.

37 (h) Offers in compromise shall not be considered where the
38 feepayer has been convicted of felony tax evasion under this part
39 during the liability period.

1 (i) For amounts to be compromised under this section, the
2 following conditions shall exist:

3 (1) The feepayer shall establish that:

4 (A) The amount offered in payment is the most that can be
5 expected to be paid or collected from the feepayer's present assets
6 or income.

7 (B) The feepayer does not have reasonable prospects of
8 acquiring increased income or assets that would enable the feepayer
9 to satisfy a greater amount of the liability than the amount offered,
10 within a reasonable period of time.

11 (2) The board shall have determined that acceptance of the
12 compromise is in the best interest of the state.

13 (j) A determination by the board that it would not be in the best
14 interest of the state to accept an offer in compromise in satisfaction
15 of a final fee liability shall not be subject to administrative appeal
16 or judicial review.

17 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
18 require a minimum offer of the unpaid fee and fraud or evasion
19 penalty.

20 (2) The minimum offer may be waived if it can be shown that
21 the feepayer making the offer was not the person responsible for
22 perpetrating the fraud or evasion. This authorization to waive only
23 applies to partnership accounts where the intent to commit fraud
24 or evasion can be clearly attributed to a partner of the feepayer.

25 (l) When an offer in compromise is either accepted or rejected,
26 or the terms and conditions of a compromise agreement are
27 fulfilled, the board shall notify the feepayer in writing. In the event
28 an offer is rejected, the amount posted will either be applied to the
29 liability or refunded, at the discretion of the feepayer.

30 (m) When more than one feepayer is liable for the debt, such
31 as with spouses or partnerships or other business combinations,
32 including, but not limited to, feepayers who are liable through dual
33 determination or successor's liability, the acceptance of an offer
34 in compromise from one liable feepayer shall reduce the amount
35 of the liability of the other feepayers by the amount of the accepted
36 offer.

37 (n) Whenever a compromise of fees or penalties or total fees
38 and penalties in excess of five hundred dollars (\$500) is approved,
39 there shall be placed on file for at least one year in the office of
40 the executive director of the board a public record with respect to

1 that compromise. The public record shall include all of the
2 following information:

- 3 (1) The name of the feepayer.
- 4 (2) The amount of unpaid fees and related penalties, additions
5 to fees, interest, or other amounts involved.
- 6 (3) The amount offered.
- 7 (4) A summary of the reason why the compromise is in the best
8 interest of the state.

9 The public record shall not include any information that relates
10 to any trade secrets, patent, process, style of work, apparatus,
11 business secret, or organizational structure, that if disclosed, would
12 adversely affect the feepayer or violate the confidentiality
13 provisions of Section 40175. No list shall be prepared and no
14 releases distributed by the board in connection with these
15 statements.

16 (o) Any compromise made under this section may be rescinded,
17 all compromised liabilities may be reestablished, without regard
18 to any statute of limitations that otherwise may be applicable, and
19 no portion of the amount offered in compromise refunded, if either
20 of the following occurs:

21 (1) The board determines that any person did any of the
22 following acts regarding the making of the offer:

23 (A) Concealed from the board any property belonging to the
24 estate of any feepayer or other person liable for the fee.

25 (B) Received, withheld, destroyed, mutilated, or falsified any
26 book, document, or record or made any false statement, relating
27 to the estate or financial condition of the feepayer or other person
28 liable for the fee.

29 (2) The feepayer fails to comply with any of the terms and
30 conditions relative to the offer.

31 (p) Any person who, in connection with any offer or compromise
32 under this section, or offer of that compromise to enter into that
33 agreement, willfully does either of the following shall be guilty of
34 a felony and, upon conviction, shall be fined not more than fifty
35 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
36 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
37 both, together with the costs of investigation and prosecution:

38 (1) Conceals from any officer or employee of this state any
39 property belonging to the estate of a feepayer or other person liable
40 in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(q) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

(r) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 588. Section 46628 of the Revenue and Taxation Code, as added by Chapter 222 of the Statutes of 2008, is amended to read:

46628. (a) (1) The executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 24 (commencing with Section 46001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or

1 has a controlling interest or association with a similar type of
2 business as the transferred or discontinued business.

3 (d) Offers in compromise shall not be considered where the
4 feepayer has been convicted of felony tax evasion under this part
5 during the liability period.

6 (e) For amounts to be compromised under this section, the
7 following conditions shall exist:

8 (1) The feepayer shall establish that:

9 (A) The amount offered in payment is the most that can be
10 expected to be paid or collected from the feepayer's present assets
11 or income.

12 (B) The feepayer does not have reasonable prospects of
13 acquiring increased income or assets that would enable the feepayer
14 to satisfy a greater amount of the liability than the amount offered,
15 within a reasonable period of time.

16 (2) The board shall have determined that acceptance of the
17 compromise is in the best interest of the state.

18 (f) A determination by the board that it would not be in the best
19 interest of the state to accept an offer in compromise in satisfaction
20 of a final fee liability shall not be subject to administrative appeal
21 or judicial review.

22 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
23 require a minimum offer of the unpaid fee and fraud or evasion
24 penalty.

25 (2) The minimum offer may be waived if it can be shown that
26 the feepayer making the offer was not the person responsible for
27 perpetrating the fraud or evasion. This authorization to waive only
28 applies to partnership accounts where the intent to commit fraud
29 or evasion can be clearly attributed to a partner of the feepayer.

30 (h) When an offer in compromise is either accepted or rejected,
31 or the terms and conditions of a compromise agreement are
32 fulfilled, the board shall notify the feepayer in writing. In the event
33 an offer is rejected, the amount posted will either be applied to the
34 liability or refunded, at the discretion of the feepayer.

35 (i) When more than one feepayer is liable for the debt, such as
36 with spouses or partnerships or other business combinations,
37 including, but not limited to, feepayers who are liable through dual
38 determination or successor's liability, the acceptance of an offer
39 in compromise from one liable feepayer shall reduce the amount

1 of the liability of the other feepayers by the amount of the accepted
2 offer.

3 (j) Whenever a compromise of fees or penalties or total fees
4 and penalties in excess of five hundred dollars (\$500) is approved,
5 there shall be placed on file for at least one year in the office of
6 the executive director of the board a public record with respect to
7 that compromise. The public record shall include all of the
8 following information:

9 (1) The name of the feepayer.

10 (2) The amount of unpaid fees and related penalties, additions
11 to fees, interest, or other amounts involved.

12 (3) The amount offered.

13 (4) A summary of the reason why the compromise is in the best
14 interest of the state.

15 The public record shall not include any information that relates
16 to any trade secrets, patent, process, style of work, apparatus,
17 business secret, or organizational structure, that if disclosed, would
18 adversely affect the feepayer or violate the confidentiality
19 provisions of Section 40175. No list shall be prepared and no
20 releases distributed by the board in connection with these
21 statements.

22 (k) Any compromise made under this section may be rescinded,
23 all compromised liabilities may be reestablished, without regard
24 to any statute of limitations that otherwise may be applicable, and
25 no portion of the amount offered in compromise refunded, if either
26 of the following occurs:

27 (1) The board determines that any person did any of the
28 following acts regarding the making of the offer:

29 (A) Concealed from the board any property belonging to the
30 estate of any feepayer or other person liable for the fee.

31 (B) Received, withheld, destroyed, mutilated, or falsified any
32 book, document, or record or made any false statement, relating
33 to the estate or financial condition of the feepayer or other person
34 liable for the fee.

35 (2) The feepayer fails to comply with any of the terms and
36 conditions relative to the offer.

37 (l) Any person who, in connection with any offer or compromise
38 under this section, or offer of that compromise to enter into that
39 agreement, willfully does either of the following shall be guilty of
40 a felony and, upon conviction, shall be fined not more than fifty

1 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
 2 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
 3 both, together with the costs of investigation and prosecution:

4 (1) Conceals from any officer or employee of this state any
 5 property belonging to the estate of a feepayer or other person liable
 6 in respect of the fee.

7 (2) Receives, withholds, destroys, mutilates, or falsifies any
 8 book, document, or record, or makes any false statement, relating
 9 to the estate or financial condition of the feepayer or other person
 10 liable in respect of the fee.

11 (m) For purposes of this section, “person” means the feepayer,
 12 any member of the feepayer’s family, any corporation, agent,
 13 fiduciary, or representative of, or any other individual or entity
 14 acting on behalf of, the feepayer, or any other corporation or entity
 15 owned or controlled by the feepayer, directly or indirectly, or that
 16 owns or controls the feepayer, directly or indirectly.

17 (n) This section shall become operative on January 1, 2013.

18 *SEC. 589. Section 46705 of the Revenue and Taxation Code*
 19 *is amended to read:*

20 46705. Every person convicted of a felony for a violation of
 21 this part for which another punishment is not specifically provided
 22 for in this part shall be punished by a fine of not more than five
 23 thousand dollars (\$5,000), by imprisonment ~~in the state prison~~
 24 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
 25 by both that fine and imprisonment in the discretion of the court,
 26 together with the cost of investigation and prosecution.

27 *SEC. 590. Section 50156.18 of the Revenue and Taxation Code,*
 28 *as amended by Section 7 of Chapter 222 of the Statutes of 2008,*
 29 *is amended to read:*

30 50156.18. (a) (1) Beginning January 1, 2003, the executive
 31 director and chief counsel of the board, or their delegates, may
 32 compromise any final fee liability in which the reduction of the
 33 fee is seven thousand five hundred dollars (\$7,500) or less.

34 (2) Except as provided in paragraph (3), the board, upon
 35 recommendation by its executive director and chief counsel, jointly,
 36 may compromise a final fee liability involving a reduction in the
 37 fee in excess of seven thousand five hundred dollars (\$7,500). Any
 38 recommendation for approval of an offer in compromise that is
 39 not either approved or disapproved within 45 days of the
 40 submission of the recommendation shall be deemed approved.

1 (3) The board, itself, may by resolution delegate to the executive
2 director and the chief counsel, jointly, the authority to compromise
3 a final fee liability in which the reduction of the fee is in excess
4 of seven thousand five hundred dollars (\$7,500), but less than ten
5 thousand dollars (\$10,000).

6 (b) For purposes of this section, “a final fee liability” means
7 any final fee liability arising under Part 26 (commencing with
8 Section 50101), or related interest, additions to the fee, penalties,
9 or other amounts assessed under this part.

10 (c) (1) Offers in compromise shall be considered only for
11 liabilities that were generated from a business that has been
12 discontinued or transferred, where the feepayer making the offer
13 no longer has a controlling interest or association with the
14 transferred business or has a controlling interest or association
15 with a similar type of business as the transferred or discontinued
16 business.

17 (2) Notwithstanding paragraph (1), a qualified final fee liability
18 may be compromised regardless of whether the business has been
19 discontinued or transferred or whether the feepayer has a
20 controlling interest or association with a similar type of business
21 as the transferred or discontinued business. All other provisions
22 of this section that apply to a final fee liability shall also apply to
23 a qualified final fee liability, and no compromise shall be made
24 under this subdivision unless all other requirements of this section
25 are met. For purposes of this subdivision, a “qualified final fee
26 liability” means that part of a final fee liability, including related
27 interest, additions to fee, penalties, or other amounts assessed under
28 this part, arising from a transaction or transactions in which the
29 board finds no evidence that the owner of the underground storage
30 tank collected underground storage tank maintenance fee
31 reimbursement from the operator of the underground storage tank
32 or other person and which was determined against the feepayer
33 under Article 2 (commencing with Section 50113) or Article 3
34 (commencing with Section 50114) of Chapter 3.

35 (3) A qualified final fee liability may not be compromised with
36 any of the following:

37 (A) A feepayer who previously received a compromise under
38 paragraph (2) for a liability, or a part thereof, arising from a
39 transaction or transactions that are substantially similar to the

1 transaction or transactions attributable to the liability for which
2 the feepayer is making the offer.

3 (B) A business that was transferred by a feepayer who previously
4 received a compromise under paragraph (2) and who has a
5 controlling interest or association with the transferred business,
6 when the liability for which the offer is made is attributable to a
7 transaction or transactions substantially similar to the transaction
8 or transactions for which the feepayer's liability was previously
9 compromised.

10 (C) A business in which a feepayer who previously received a
11 compromise under paragraph (2) has a controlling interest or
12 association with a similar type of business for which the feepayer
13 received the compromise, when the liability of the business making
14 the offer arose from a transaction or transactions substantially
15 similar to the transaction or transactions for which the feepayer's
16 liability was previously compromised.

17 (d) The board may, in its discretion, enter into a written
18 agreement which permits the feepayer to pay the compromise in
19 installments for a period not exceeding one year. The agreement
20 may provide that such installments shall be paid by electronic
21 funds transfers or any other means to facilitate the payment of each
22 installment.

23 (e) Except for any recommendation for approval as specified
24 in subdivision (a), the members of the State Board of Equalization
25 shall not participate in any offer in compromise matters pursuant
26 to this section.

27 (f) A feepayer that has received a compromise under paragraph
28 (2) of subdivision (c) may be required to enter into any collateral
29 agreement that is deemed necessary for the protection of the
30 interests of the state. A collateral agreement may include a
31 provision that allows the board to reestablish the liability, or any
32 portion thereof, if the feepayer has sufficient annual income during
33 the succeeding five-year period. The board shall establish criteria
34 for determining "sufficient annual income" for purposes of this
35 subdivision.

36 (g) A feepayer that has received a compromise under paragraph
37 (2) of subdivision (c) shall file and pay by the due date all
38 subsequently required underground storage tank maintenance fee
39 returns for a five-year period from the date the liability is
40 compromised, or until the feepayer is no longer required to file

1 underground storage tank maintenance fee returns, whichever
2 period is earlier.

3 (h) For amounts to be compromised under this section, the
4 following conditions shall exist:

5 (1) The feepayer shall establish that:

6 (A) The amount offered in payment is the most that can be
7 expected to be paid or collected from the feepayer's present assets
8 or income.

9 (B) The feepayer does not have reasonable prospects of
10 acquiring increased income or assets that would enable the feepayer
11 to satisfy a greater amount of the liability than the amount offered,
12 within a reasonable period of time.

13 (2) The board shall have determined that acceptance of the
14 compromise is in the best interest of the state.

15 (i) A determination by the board that it would not be in the best
16 interest of the state to accept an offer in compromise in satisfaction
17 of a final fee liability shall not be subject to administrative appeal
18 or judicial review.

19 (j) When an offer in compromise is either accepted or rejected,
20 or the terms and conditions of a compromise agreement are
21 fulfilled, the board shall notify the feepayer in writing. In the event
22 an offer is rejected, the amount posted will either be applied to the
23 liability or refunded, at the discretion of the feepayer.

24 (k) When more than one feepayer is liable for the debt, such as
25 with spouses or partnerships or other business combinations, the
26 acceptance of an offer in compromise from one liable feepayer
27 shall not relieve the other feepayers from paying the entire liability.
28 However, the amount of the liability shall be reduced by the amount
29 of the accepted offer.

30 (l) Whenever a compromise of the fee or penalties or total fees
31 and penalties in excess of five hundred dollars (\$500) is approved,
32 there shall be placed on file for at least one year in the office of
33 the executive director of the board a public record with respect to
34 that compromise. The public record shall include all of the
35 following information:

36 (1) The name of the feepayer.

37 (2) The amount of unpaid fees and related penalties, additions
38 to fees, interest, or other amounts involved.

39 (3) The amount offered.

1 (4) A summary of the reason why the compromise is in the best
2 interest of the state.

3 The public record shall not include any information that relates
4 to any trade secrets, patent, process, style of work, apparatus,
5 business secret, or organizational structure, that if disclosed, would
6 adversely affect the feepayer or violate the confidentiality
7 provisions of Chapter 8 of Article 2 (commencing with Section
8 50156). No list shall be prepared and no releases distributed by
9 the board in connection with these statements.

10 (m) Any compromise made under this section may be rescinded,
11 all compromised liabilities may be reestablished (without regard
12 to any statute of limitations that otherwise may be applicable), and
13 no portion of the amount offered in compromise refunded, if either
14 of the following occurs:

15 (1) The board determines that any person did any of the
16 following acts regarding the making of the offer:

17 (A) Concealed from the board any property belonging to the
18 estate of any feepayer or other person liable for the fee.

19 (B) Received, withheld, destroyed, mutilated, or falsified any
20 book, document, or record or made any false statement, relating
21 to the estate or financial condition of the feepayer or other person
22 liable for the fee.

23 (2) The feepayer fails to comply with any of the terms and
24 conditions relative to the offer.

25 (n) Any person who, in connection with any offer or compromise
26 under this section, or offer of that compromise to enter into that
27 agreement, willfully does either of the following shall be guilty of
28 a felony and, upon conviction, shall be fined not more than fifty
29 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
30 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
31 both, together with the costs of investigation and prosecution:

32 (1) Conceals from any officer or employee of this state any
33 property belonging to the estate of a feepayer or other person liable
34 in respect of the fee.

35 (2) Receives, withholds, destroys, mutilates, or falsifies any
36 book, document, or record, or makes any false statement, relating
37 to the estate or financial condition of the feepayer or other person
38 liable in respect of the fee.

39 (o) For purposes of this section, "person" means the feepayer,
40 any member of the feepayer's family, any corporation, agent,

1 fiduciary, or representative of, or any other individual or entity
2 acting on behalf of, the feepayer, or any other corporation or entity
3 owned or controlled by the feepayer, directly or indirectly, or that
4 owns or controls the feepayer, directly or indirectly.

5 (p) This section shall remain in effect only until January 1, 2013,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2013, deletes or extends that date.

8 *SEC. 591. Section 50156.18 of the Revenue and Taxation Code,*
9 *as added by Chapter 222 of the Statutes of 2008, is amended to*
10 *read:*

11 50156.18. (a) (1) The executive director and chief counsel of
12 the board, or their delegates, may compromise any final fee liability
13 in which the reduction of the fee is seven thousand five hundred
14 dollars (\$7,500) or less.

15 (2) Except as provided in paragraph (3), the board, upon
16 recommendation by its executive director and chief counsel, jointly,
17 may compromise a final fee liability involving a reduction in the
18 fee in excess of seven thousand five hundred dollars (\$7,500). Any
19 recommendation for approval of an offer in compromise that is
20 not either approved or disapproved within 45 days of the
21 submission of the recommendation shall be deemed approved.

22 (3) The board, itself, may by resolution delegate to the executive
23 director and the chief counsel, jointly, the authority to compromise
24 a final fee liability in which the reduction of the fee is in excess
25 of seven thousand five hundred dollars (\$7,500), but less than ten
26 thousand dollars (\$10,000).

27 (b) For purposes of this section, “a final fee liability” means
28 any final fee liability arising under Part 26 (commencing with
29 Section 50101), or related interest, additions to the fee, penalties,
30 or other amounts assessed under this part.

31 (c) Offers in compromise shall be considered only for liabilities
32 that were generated from a business that has been discontinued or
33 transferred, where the feepayer making the offer no longer has a
34 controlling interest or association with the transferred business or
35 has a controlling interest or association with a similar type of
36 business as the transferred or discontinued business.

37 (d) For amounts to be compromised under this section, the
38 following conditions shall exist:

39 (1) The feepayer shall establish that:

1 (A) The amount offered in payment is the most that can be
2 expected to be paid or collected from the feepayer's present assets
3 or income.

4 (B) The feepayer does not have reasonable prospects of
5 acquiring increased income or assets that would enable the feepayer
6 to satisfy a greater amount of the liability than the amount offered,
7 within a reasonable period of time.

8 (2) The board shall have determined that acceptance of the
9 compromise is in the best interest of the state.

10 (e) A determination by the board that it would not be in the best
11 interest of the state to accept an offer in compromise in satisfaction
12 of a final fee liability shall not be subject to administrative appeal
13 or judicial review.

14 (f) When an offer in compromise is either accepted or rejected,
15 or the terms and conditions of a compromise agreement are
16 fulfilled, the board shall notify the feepayer in writing. In the event
17 an offer is rejected, the amount posted will either be applied to the
18 liability or refunded, at the discretion of the feepayer.

19 (g) When more than one feepayer is liable for the debt, such as
20 with spouses or partnerships or other business combinations, the
21 acceptance of an offer in compromise from one liable feepayer
22 shall not relieve the other feepayers from paying the entire liability.
23 However, the amount of the liability shall be reduced by the amount
24 of the accepted offer.

25 (h) Whenever a compromise of the fee or penalties or total fees
26 and penalties in excess of five hundred dollars (\$500) is approved,
27 there shall be placed on file for a least one year in the office of the
28 executive director of the board a public record with respect to that
29 compromise. The public record shall include all of the following
30 information:

31 (1) The name of the feepayer.

32 (2) The amount of unpaid fees and related penalties, additions
33 to fees, interest, or other amounts involved.

34 (3) The amount offered.

35 (4) A summary of the reason why the compromise is in the best
36 interest of the state.

37 The public record shall not include any information that relates
38 to any trade secrets, patent, process, style of work, apparatus,
39 business secret, or organizational structure, that if disclosed, would
40 adversely affect the feepayer or violate the confidentiality

1 provisions of Chapter 8 of Article 2 (commencing with Section
2 50156). No list shall be prepared and no releases distributed by
3 the board in connection with these statements.

4 (i) Any compromise made under this section may be rescinded,
5 all compromised liabilities may be reestablished (without regard
6 to any statute of limitations that otherwise may be applicable), and
7 no portion of the amount offered in compromise refunded, if either
8 of the following occurs:

9 (1) The board determines that any person did any of the
10 following acts regarding the making of the offer:

11 (A) Concealed from the board any property belonging to the
12 estate of any feepayer or other person liable for the fee.

13 (B) Received, withheld, destroyed, mutilated, or falsified any
14 book, document, or record or made any false statement, relating
15 to the estate or financial condition of the feepayer or other person
16 liable for the fee.

17 (2) The feepayer fails to comply with any of the terms and
18 conditions relative to the offer.

19 (j) Any person who, in connection with any offer or compromise
20 under this section, or offer of that compromise to enter into that
21 agreement, willfully does either of the following shall be guilty of
22 a felony and, upon conviction, shall be fined not more than fifty
23 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
24 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
25 both, together with the costs of investigation and prosecution:

26 (1) Conceals from any officer or employee of this state any
27 property belonging to the estate of a feepayer or other person liable
28 in respect of the fee.

29 (2) Receives, withholds, destroys, mutilates, or falsifies any
30 book, document, or record, or makes any false statement, relating
31 to the estate or financial condition of the feepayer or other person
32 liable in respect of the fee.

33 (k) For purposes of this section, “person” means the feepayer,
34 any member of the feepayer’s family, any corporation, agent,
35 fiduciary, or representative of, or any other individual or entity
36 acting on behalf of, the feepayer, or any other corporation or entity
37 owned or controlled by the feepayer, directly or indirectly, or that
38 owns or controls the feepayer, directly or indirectly.

39 (l) This section shall become operative on January 1, 2013.

1 *SEC. 592. Section 55332.5 of the Revenue and Taxation Code,*
2 *as amended by Section 8 of Chapter 222 of the Statutes of 2008,*
3 *is amended to read:*

4 55332.5. (a) (1) Beginning on January 1, 2007, the executive
5 director and chief counsel of the board, or their delegates, may
6 compromise any final fee liability where the reduction of fees is
7 seven thousand five hundred dollars (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final fee liability involving a reduction in fees
11 in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final fee liability in which the reduction of fees is in excess of
18 seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

20 (b) For purposes of this section, “a final fee liability” means
21 any final fee liability arising under Part 30 (commencing with
22 Section 55001), or related interest, additions to fees, penalties, or
23 other amounts assessed under this part.

24 (c) (1) Offers in compromise shall be considered only for
25 liabilities that were generated from a business that has been
26 discontinued or transferred, where the feepayer making the offer
27 no longer has a controlling interest or association with the
28 transferred business or has a controlling interest or association
29 with a similar type of business as the transferred or discontinued
30 business.

31 (2) Notwithstanding paragraph (1), a qualified final fee liability
32 may be compromised regardless of whether the business has been
33 discontinued or transferred or whether the feepayer has a
34 controlling interest or association with a similar type of business
35 as the transferred or discontinued business. All other provisions
36 of this section that apply to a final fee liability shall also apply to
37 a qualified final fee liability, and no compromise shall be made
38 under this subdivision unless all other requirements of this section
39 are met. For purposes of this subdivision, a “qualified final fee
40 liability” means that part of a final fee liability, including related

1 interest, additions to fee, penalties, or other amounts assessed under
2 this part, arising from a transaction or transactions in which the
3 board finds no evidence that the feepayer collected the fee from
4 the purchaser or other person and which was determined against
5 the feepayer under Article 2 (commencing with Section 55061) or
6 Article 3 (commencing with Section 55081) of Chapter 3.

7 (3) A qualified final fee liability may not be compromised with
8 any of the following:

9 (A) A feepayer who previously received a compromise under
10 paragraph (2) for a liability, or a part thereof, arising from a
11 transaction or transactions that are substantially similar to the
12 transaction or transactions attributable to the liability for which
13 the feepayer is making the offer.

14 (B) A business that was transferred by a feepayer who previously
15 received a compromise under paragraph (2) and who has a
16 controlling interest or association with the transferred business,
17 when the liability for which the offer is made is attributable to a
18 transaction or transactions substantially similar to the transaction
19 or transactions for which the feepayer's liability was previously
20 compromised.

21 (C) A business in which a feepayer who previously received a
22 compromise under paragraph (2) has a controlling interest or
23 association with a similar type of business for which the feepayer
24 received the compromise, when the liability of the business making
25 the offer arose from a transaction or transactions substantially
26 similar to the transaction or transactions for which the feepayer's
27 liability was previously compromised.

28 (d) The board may, in its discretion, enter into a written
29 agreement which permits the feepayer to pay the compromise in
30 installments for a period not exceeding one year. The agreement
31 may provide that such installments shall be paid by electronic
32 funds transfers or any other means to facilitate the payment of each
33 installment.

34 (e) Except for any recommendation for approval as specified
35 in subdivision (a), the members of the State Board of Equalization
36 shall not participate in any offer in compromise matters pursuant
37 to this section.

38 (f) A feepayer that has received a compromise under paragraph
39 (2) of subdivision (c) may be required to enter into any collateral
40 agreement that is deemed necessary for the protection of the

1 interests of the state. A collateral agreement may include a
2 provision that allows the board to reestablish the liability, or any
3 portion thereof, if the feepayer has sufficient annual income during
4 the succeeding five-year period. The board shall establish criteria
5 for determining “sufficient annual income” for purposes of this
6 subdivision.

7 (g) A feepayer that has received a compromise under paragraph
8 (2) of subdivision (c) shall file and pay by the due date all
9 subsequently required returns for a five-year period from the date
10 the liability is compromised, or until the feepayer is no longer
11 required to file returns, whichever period is earlier.

12 (h) Offers in compromise shall not be considered where the
13 feepayer has been convicted of felony tax evasion under this part
14 during the liability period.

15 (i) For amounts to be compromised under this section, the
16 following conditions shall exist:

17 (1) The feepayer shall establish that:

18 (A) The amount offered in payment is the most that can be
19 expected to be paid or collected from the feepayer’s present assets
20 or income.

21 (B) The feepayer does not have reasonable prospects of
22 acquiring increased income or assets that would enable the feepayer
23 to satisfy a greater amount of the liability than the amount offered,
24 within a reasonable period of time.

25 (2) The board shall have determined that acceptance of the
26 compromise is in the best interest of the state.

27 (j) A determination by the board that it would not be in the best
28 interest of the state to accept an offer in compromise in satisfaction
29 of a final fee liability shall not be subject to administrative appeal
30 or judicial review.

31 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
32 require a minimum offer of the unpaid fee and fraud or evasion
33 penalty.

34 (2) The minimum offer may be waived if it can be shown that
35 the feepayer making the offer was not the person responsible for
36 perpetrating the fraud or evasion. This authorization to waive only
37 applies to partnership accounts where the intent to commit fraud
38 or evasion can be clearly attributed to a partner of the feepayer.

39 (l) When an offer in compromise is either accepted or rejected,
40 or the terms and conditions of a compromise agreement are

1 fulfilled, the board shall notify the feepayer in writing. In the event
2 an offer is rejected, the amount posted will either be applied to the
3 liability or refunded, at the discretion of the feepayer.

4 (m) When more than one feepayer is liable for the debt, such
5 as with spouses or partnerships or other business combinations,
6 including, but not limited to, feepayers who are liable through dual
7 determination or successor's liability, the acceptance of an offer
8 in compromise from one liable feepayer shall reduce the amount
9 of the liability of the other feepayers by the amount of the accepted
10 offer.

11 (n) Whenever a compromise of fees or penalties or total fees
12 and penalties in excess of five hundred dollars (\$500) is approved,
13 there shall be placed on file for at least one year in the office of
14 the executive director of the board a public record with respect to
15 that compromise. The public record shall include all of the
16 following information:

17 (1) The name of the feepayer.

18 (2) The amount of unpaid fees and related penalties, additions
19 to fees, interest, or other amounts involved.

20 (3) The amount offered.

21 (4) A summary of the reason why the compromise is in the best
22 interest of the state.

23 The public record shall not include any information that relates
24 to any trade secrets, patent, process, style of work, apparatus,
25 business secret, or organizational structure, that if disclosed, would
26 adversely affect the feepayer or violate the confidentiality
27 provisions of Section 55381. No list shall be prepared and no
28 releases distributed by the board in connection with these
29 statements.

30 (o) Any compromise made under this section may be rescinded,
31 all compromised liabilities may be reestablished, without regard
32 to any statute of limitations that otherwise may be applicable, and
33 no portion of the amount offered in compromise refunded, if either
34 of the following occurs:

35 (1) The board determines that any person did any of the
36 following acts regarding the making of the offer:

37 (A) Concealed from the board any property belonging to the
38 estate of any feepayer or other person liable for the fee.

39 (B) Received, withheld, destroyed, mutilated, or falsified any
40 book, document, or record or made any false statement, relating

1 to the estate or financial condition of the feepayer or other person
2 liable for the fee.

3 (2) The feepayer fails to comply with any of the terms and
4 conditions relative to the offer.

5 (p) Any person who, in connection with any offer or compromise
6 under this section, or offer of that compromise to enter into that
7 agreement, willfully does either of the following shall be guilty of
8 a felony and, upon conviction, shall be fined not more than fifty
9 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
10 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
11 both, together with the costs of investigation and prosecution:

12 (1) Conceals from any officer or employee of this state any
13 property belonging to the estate of a feepayer or other person liable
14 in respect of the fee.

15 (2) Receives, withholds, destroys, mutilates, or falsifies any
16 book, document, or record, or makes any false statement, relating
17 to the estate fee.

18 (q) For purposes of this section, “person” means the feepayer,
19 any member of the feepayer’s family, any corporation, agent,
20 fiduciary, or representative of, or any other individual or entity
21 acting on behalf of, the feepayer, or any other corporation or entity
22 owned or controlled by the feepayer, directly or indirectly, or that
23 owns or controls the feepayer, directly or indirectly.

24 (r) This section shall remain in effect only until January 1, 2013,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2013, deletes or extends that date.

27 *SEC. 593. Section 55332.5 of the Revenue and Taxation Code,*
28 *as added by Chapter 222 of the Statutes of 2008, is amended to*
29 *read:*

30 55332.5. (a) (1) The executive director and chief counsel of
31 the board, or their delegates, may compromise any final fee liability
32 where the reduction of fees is seven thousand five hundred dollars
33 (\$7,500) or less.

34 (2) Except as provided in paragraph (3), the board, upon
35 recommendation by its executive director and chief counsel, jointly,
36 may compromise a final fee liability involving a reduction in fees
37 in excess of seven thousand five hundred dollars (\$7,500). Any
38 recommendation for approval of an offer in compromise that is
39 not either approved or disapproved within 45 days of the
40 submission of the recommendation shall be deemed approved.

1 (3) The board, itself, may by resolution delegate to the executive
2 director and the chief counsel, jointly, the authority to compromise
3 a final fee liability in which the reduction of fees is in excess of
4 seven thousand five hundred dollars (\$7,500), but less than ten
5 thousand dollars (\$10,000).

6 (b) For purposes of this section, “a final fee liability” means
7 any final fee liability arising under Part 30 (commencing with
8 Section 55001), or related interest, additions to fees, penalties, or
9 other amounts assessed under this part.

10 (c) Offers in compromise shall be considered only for liabilities
11 that were generated from a business that has been discontinued or
12 transferred, where the feepayer making the offer no longer has a
13 controlling interest or association with the transferred business or
14 has a controlling interest or association with a similar type of
15 business as the transferred or discontinued business.

16 (d) Offers in compromise shall not be considered where the
17 feepayer has been convicted of felony tax evasion under this part
18 during the liability period.

19 (e) For amounts to be compromised under this section, the
20 following conditions shall exist:

21 (1) The feepayer shall establish that:

22 (A) The amount offered in payment is the most that can be
23 expected to be paid or collected from the feepayer’s present assets
24 or income.

25 (B) The feepayer does not have reasonable prospects of
26 acquiring increased income or assets that would enable the feepayer
27 to satisfy a greater amount of the liability than the amount offered,
28 within a reasonable period of time.

29 (2) The board shall have determined that acceptance of the
30 compromise is in the best interest of the state.

31 (f) A determination by the board that it would not be in the best
32 interest of the state to accept an offer in compromise in satisfaction
33 of a final fee liability shall not be subject to administrative appeal
34 or judicial review.

35 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
36 require a minimum offer of the unpaid fee and fraud or evasion
37 penalty.

38 (2) The minimum offer may be waived if it can be shown that
39 the feepayer making the offer was not the person responsible for
40 perpetrating the fraud or evasion. This authorization to waive only

1 applies to partnership accounts where the intent to commit fraud
2 or evasion can be clearly attributed to a partner of the feepayer.

3 (h) When an offer in compromise is either accepted or rejected,
4 or the terms and conditions of a compromise agreement are
5 fulfilled, the board shall notify the feepayer in writing. In the event
6 an offer is rejected, the amount posted will either be applied to the
7 liability or refunded, at the discretion of the feepayer.

8 (i) When more than one feepayer is liable for the debt, such as
9 with spouses or partnerships or other business combinations,
10 including, but not limited to, feepayers who are liable through dual
11 determination or successor's liability, the acceptance of an offer
12 in compromise from one liable feepayer shall reduce the amount
13 of the liability of the other feepayers by the amount of the accepted
14 offer.

15 (j) Whenever a compromise of fees or penalties or total fees
16 and penalties in excess of five hundred dollars (\$500) is approved,
17 there shall be placed on file for at least one year in the office of
18 the executive director of the board a public record with respect to
19 that compromise. The public record shall include all of the
20 following information:

21 (1) The name of the feepayer.

22 (2) The amount of unpaid fees and related penalties, additions
23 to fees, interest, or other amounts involved.

24 (3) The amount offered.

25 (4) A summary of the reason why the compromise is in the best
26 interest of the state.

27 The public record shall not include any information that relates
28 to any trade secrets, patent, process, style of work, apparatus,
29 business secret, or organizational structure, that if disclosed, would
30 adversely affect the feepayer or violate the confidentiality
31 provisions of Section 55381. No list shall be prepared and no
32 releases distributed by the board in connection with these
33 statements.

34 (k) Any compromise made under this section may be rescinded,
35 all compromised liabilities may be reestablished, without regard
36 to any statute of limitations that otherwise may be applicable, and
37 no portion of the amount offered in compromise refunded, if either
38 of the following occurs:

39 (1) The board determines that any person did any of the
40 following acts regarding the making of the offer:

1 (A) Concealed from the board any property belonging to the
2 estate of any feepayer or other person liable for the fee.

3 (B) Received, withheld, destroyed, mutilated, or falsified any
4 book, document, or record or made any false statement, relating
5 to the estate or financial condition of the feepayer or other person
6 liable for the fee.

7 (2) The feepayer fails to comply with any of the terms and
8 conditions relative to the offer.

9 (l) Any person who, in connection with any offer or compromise
10 under this section, or offer of that compromise to enter into that
11 agreement, willfully does either of the following shall be guilty of
12 a felony and, upon conviction, shall be fined not more than fifty
13 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
14 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
15 both, together with the costs of investigation and prosecution:

16 (1) Conceals from any officer or employee of this state any
17 property belonging to the estate of a feepayer or other person liable
18 in respect of the fee.

19 (2) Receives, withholds, destroys, mutilates, or falsifies any
20 book, document, or record, or makes any false statement, relating
21 to the estate fee.

22 (m) For purposes of this section, “person” means the feepayer,
23 any member of the feepayer’s family, any corporation, agent,
24 fiduciary, or representative of, or any other individual or entity
25 acting on behalf of, the feepayer, or any other corporation or entity
26 owned or controlled by the feepayer, directly or indirectly, or that
27 owns or controls the feepayer, directly or indirectly.

28 (n) This section shall become operative on January 1, 2013.

29 *SEC. 594. Section 55363 of the Revenue and Taxation Code*
30 *is amended to read:*

31 55363. Any person who willfully evades or attempts in any
32 manner to evade or defeat the payment of the fee imposed by this
33 part is guilty of a felony punishable by imprisonment ~~in the state~~
34 ~~prison~~ *pursuant to subdivision (h) of Section 1170 of the Penal*
35 *Code* for 16 months, 2, or 3 years and a fine of not more than five
36 thousand dollars (\$5,000).

37 *SEC. 595. Section 60637 of the Revenue and Taxation Code,*
38 *as amended by Section 9 of Chapter 222 of the Statutes of 2008,*
39 *is amended to read:*

60637. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability where the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final tax liability” means any final tax liability arising under Part 31 (commencing with Section 60001), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) (1) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(2) Notwithstanding paragraph (1), a qualified final tax liability may be compromised regardless of whether the business has been discontinued or transferred or whether the taxpayer has a controlling interest or association with a similar type of business as the transferred or discontinued business. All other provisions of this section that apply to a final tax liability shall also apply to a qualified final tax liability, and no compromise shall be made under this subdivision unless all other requirements of this section are met. For purposes of this subdivision, a “qualified final tax liability” means any of the following:

(A) That part of a final tax liability, including related interest, additions to tax, penalties, or other amounts assessed under this part, arising from a transaction or transactions in which the board

1 finds no evidence that the supplier collected diesel fuel tax
2 reimbursement from the purchaser or other person and which was
3 determined by the board against the taxpayer under Article 2
4 (commencing with Section 60301), Article 3 (commencing with
5 Section 60310), Article 5 (commencing with Section 60350), or
6 Article 6 (commencing with Section 60360) of Chapter 6.

7 (B) A final tax liability, including related interest, additions to
8 tax, penalties, or other amounts assessed under this part, arising
9 under Article 6 (commencing with Section 60471) of Chapter 7.

10 (C) That part of a final tax liability for diesel fuel tax, including
11 related interest, additions to tax, penalties, or other amounts
12 assessed under this part, determined under Article 2 (commencing
13 with Section 60301), Article 3 (commencing with Section 60310),
14 Article 5 (commencing with Section 60350) and Article 6
15 (commencing with Section 60360) of Chapter 6 against an exempt
16 bus operator, government entity, or qualified highway vehicle
17 operator who used dyed diesel fuel on the highway.

18 (3) A qualified final tax liability may not be compromised with
19 any of the following:

20 (A) A taxpayer who previously received a compromise under
21 paragraph (2) for a liability, or a part thereof, arising from a
22 transaction or transactions that are substantially similar to the
23 transaction or transactions attributable to the liability for which
24 the taxpayer is making the offer.

25 (B) A business that was transferred by a taxpayer who previously
26 received a compromise under paragraph (2) and who has a
27 controlling interest or association with the transferred business,
28 when the liability for which the offer is made is attributable to a
29 transaction or transactions substantially similar to the transaction
30 or transactions for which the taxpayer's liability was previously
31 compromised.

32 (C) A business in which a taxpayer who previously received a
33 compromise under paragraph (2) has a controlling interest or
34 association with a similar type of business for which the taxpayer
35 received the compromise, when the liability of the business making
36 the offer arose from a transaction or transactions substantially
37 similar to the transaction or transactions for which the taxpayer's
38 liability was previously compromised.

39 (d) The board may, in its discretion, enter into a written
40 agreement which permits the taxpayer to pay the compromise in

1 installments for a period not exceeding one year. The agreement
2 may provide that such installments shall be paid by electronic
3 funds transfers or any other means to facilitate the payment of each
4 installment.

5 (e) Except for any recommendation for approval as specified
6 in subdivision (a), the members of the State Board of Equalization
7 shall not participate in any offer in compromise matters pursuant
8 to this section.

9 (f) A taxpayer that has received a compromise under paragraph
10 (2) of subdivision (c) may be required to enter into any collateral
11 agreement that is deemed necessary for the protection of the
12 interests of the state. A collateral agreement may include a
13 provision that allows the board to reestablish the liability, or any
14 portion thereof, if the taxpayer has sufficient annual income during
15 the succeeding five-year period. The board shall establish criteria
16 for determining “sufficient annual income” for purposes of this
17 subdivision.

18 (g) A taxpayer that has received a compromise under paragraph
19 (2) of subdivision (c) shall file and pay by the due date all
20 subsequently required returns for a five-year period from the date
21 the liability is compromised, or until the taxpayer is no longer
22 required to file returns, whichever period is earlier.

23 (h) Offers in compromise shall not be considered where the
24 taxpayer has been convicted of felony tax evasion under this part
25 during the liability period.

26 (i) For amounts to be compromised under this section, the
27 following conditions shall exist:

28 (1) The taxpayer shall establish that:

29 (A) The amount offered in payment is the most that can be
30 expected to be paid or collected from the taxpayer’s present assets
31 or income.

32 (B) The taxpayer does not have reasonable prospects of
33 acquiring increased income or assets that would enable the taxpayer
34 to satisfy a greater amount of the liability than the amount offered,
35 within a reasonable period of time.

36 (2) The board shall have determined that acceptance of the
37 compromise is in the best interest of the state.

38 (j) A determination by the board that it would not be in the best
39 interest of the state to accept an offer in compromise in satisfaction

1 of a final tax liability shall not be subject to administrative appeal
2 or judicial review.

3 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
4 require a minimum offer of the unpaid tax and fraud or evasion
5 penalty.

6 (2) The minimum offer may be waived if it can be shown that
7 the taxpayer making the offer was not the person responsible for
8 perpetrating the fraud or evasion. This authorization to waive only
9 applies to partnership accounts where the intent to commit fraud
10 or evasion can be clearly attributed to a partner of the taxpayer.

11 (l) When an offer in compromise is either accepted or rejected,
12 or the terms and conditions of a compromise agreement are
13 fulfilled, the board shall notify the taxpayer in writing. In the event
14 an offer is rejected, the amount posted will either be applied to the
15 liability or refunded, at the discretion of the taxpayer.

16 (m) When more than one taxpayer is liable for the debt, such
17 as with spouses or partnerships or other business combinations,
18 including, but not limited to, taxpayers who are liable through dual
19 determination or successor's liability, the acceptance of an offer
20 in compromise from one liable taxpayer shall reduce the amount
21 of the liability of the other taxpayers by the amount of the accepted
22 offer.

23 (n) Whenever a compromise of tax or penalties or total tax and
24 penalties in excess of five hundred dollars (\$500) is approved,
25 there shall be placed on file for at least one year in the office of
26 the executive director of the board a public record with respect to
27 that compromise. The public record shall include all of the
28 following information:

29 (1) The name of the taxpayer.

30 (2) The amount of unpaid tax and related penalties, additions
31 to tax, interest, or other amounts involved.

32 (3) The amount offered.

33 (4) A summary of the reason why the compromise is in the best
34 interest of the state.

35 The public record shall not include any information that relates
36 to any trade secrets, patent, process, style of work, apparatus,
37 business secret, or organizational structure, that if disclosed, would
38 adversely affect the taxpayer or violate the confidentiality
39 provisions of Section 60609. No list shall be prepared and no

1 releases distributed by the board in connection with these
2 statements.

3 (o) Any compromise made under this section may be rescinded,
4 all compromised liabilities may be reestablished, without regard
5 to any statute of limitations that otherwise may be applicable, and
6 no portion of the amount offered in compromise refunded, if either
7 of the following occurs:

8 (1) The board determines that any person did any of the
9 following acts regarding the making of the offer:

10 (A) Concealed from the board any property belonging to the
11 estate of any taxpayer or other person liable for the tax.

12 (B) Received, withheld, destroyed, mutilated, or falsified any
13 book, document, or record or made any false statement, relating
14 to the estate or financial condition of the taxpayer or other person
15 liable for the tax.

16 (2) The taxpayer fails to comply with any of the terms and
17 conditions relative to the offer.

18 (p) Any person who, in connection with any offer or compromise
19 under this section, or offer of that compromise to enter into that
20 agreement, willfully does either of the following shall be guilty of
21 a felony and, upon conviction, shall be fined not more than fifty
22 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
23 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
24 both, together with the costs of investigation and prosecution:

25 (1) Conceals from any officer or employee of this state any
26 property belonging to the estate of a taxpayer or other person liable
27 in respect of the tax.

28 (2) Receives, withholds, destroys, mutilates, or falsifies any
29 book, document, or record, or makes any false statement, relating
30 to the estate or financial condition of the taxpayer or other person
31 liable in respect of the tax.

32 (q) For purposes of this section, “person” means the taxpayer,
33 any member of the taxpayer’s family, any corporation, agent,
34 fiduciary, or representative of, or any other individual or entity
35 acting on behalf of, the taxpayer, or any other corporation or entity
36 owned or controlled by the taxpayer, directly or indirectly, or that
37 owns or controls the taxpayer, directly or indirectly.

38 (r) This section shall remain in effect only until January 1, 2013,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2013, deletes or extends that date.

1 *SEC. 596. Section 60637 of the Revenue and Taxation Code,*
2 *as added by Chapter 222 of the Statutes of 2008, is amended to*
3 *read:*

4 60637. (a) (1) The executive director and chief counsel of the
5 board, or their delegates, may compromise any final tax liability
6 where the reduction of tax is seven thousand five hundred dollars
7 (\$7,500) or less.

8 (2) Except as provided in paragraph (3), the board, upon
9 recommendation by its executive director and chief counsel, jointly,
10 may compromise a final tax liability involving a reduction in tax
11 in excess of seven thousand five hundred dollars (\$7,500). Any
12 recommendation for approval of an offer in compromise that is
13 not either approved or disapproved within 45 days of the
14 submission of the recommendation shall be deemed approved.

15 (3) The board, itself, may by resolution delegate to the executive
16 director and the chief counsel, jointly, the authority to compromise
17 a final tax liability in which the reduction of tax is in excess of
18 seven thousand five hundred dollars (\$7,500), but less than ten
19 thousand dollars (\$10,000).

20 (b) For purposes of this section, “a final tax liability” means
21 any final tax liability arising under Part 31 (commencing with
22 Section 60001), or related interest, additions to tax, penalties, or
23 other amounts assessed under this part.

24 (c) Offers in compromise shall be considered only for liabilities
25 that were generated from a business that has been discontinued or
26 transferred, where the taxpayer making the offer no longer has a
27 controlling interest or association with the transferred business or
28 has a controlling interest or association with a similar type of
29 business as the transferred or discontinued business.

30 (d) Offers in compromise shall not be considered where the
31 taxpayer has been convicted of felony tax evasion under this part
32 during the liability period.

33 (e) For amounts to be compromised under this section, the
34 following conditions shall exist:

35 (1) The taxpayer shall establish that:

36 (A) The amount offered in payment is the most that can be
37 expected to be paid or collected from the taxpayer’s present assets
38 or income.

39 (B) The taxpayer does not have reasonable prospects of
40 acquiring increased income or assets that would enable the taxpayer

1 to satisfy a greater amount of the liability than the amount offered,
2 within a reasonable period of time.

3 (2) The board shall have determined that acceptance of the
4 compromise is in the best interest of the state.

5 (f) A determination by the board that it would not be in the best
6 interest of the state to accept an offer in compromise in satisfaction
7 of a final tax liability shall not be subject to administrative appeal
8 or judicial review.

9 (g) (1) Offers for liabilities with a fraud or evasion penalty shall
10 require a minimum offer of the unpaid tax and fraud or evasion
11 penalty.

12 (2) The minimum offer may be waived if it can be shown that
13 the taxpayer making the offer was not the person responsible for
14 perpetrating the fraud or evasion. This authorization to waive only
15 applies to partnership accounts where the intent to commit fraud
16 or evasion can be clearly attributed to a partner of the taxpayer.

17 (h) When an offer in compromise is either accepted or rejected,
18 or the terms and conditions of a compromise agreement are
19 fulfilled, the board shall notify the taxpayer in writing. In the event
20 an offer is rejected, the amount posted will either be applied to the
21 liability or refunded, at the discretion of the taxpayer.

22 (i) When more than one taxpayer is liable for the debt, such as
23 with spouses or partnerships or other business combinations,
24 including, but not limited to, taxpayers who are liable through dual
25 determination or successor's liability, the acceptance of an offer
26 in compromise from one liable taxpayer shall reduce the amount
27 of the liability of the other taxpayers by the amount of the accepted
28 offer.

29 (j) Whenever a compromise of tax or penalties or total tax and
30 penalties in excess of five hundred dollars (\$500) is approved,
31 there shall be placed on file for at least one year in the office of
32 the executive director of the board a public record with respect to
33 that compromise. The public record shall include all of the
34 following information:

35 (1) The name of the taxpayer.

36 (2) The amount of unpaid tax and related penalties, additions
37 to tax, interest, or other amounts involved.

38 (3) The amount offered.

39 (4) A summary of the reason why the compromise is in the best
40 interest of the state.

1 The public record shall not include any information that relates
2 to any trade secrets, patent, process, style of work, apparatus,
3 business secret, or organizational structure, that if disclosed, would
4 adversely affect the taxpayer or violate the confidentiality
5 provisions of Section 60609. No list shall be prepared and no
6 releases distributed by the board in connection with these
7 statements.

8 (k) Any compromise made under this section may be rescinded,
9 all compromised liabilities may be reestablished, without regard
10 to any statute of limitations that otherwise may be applicable, and
11 no portion of the amount offered in compromise refunded, if either
12 of the following occurs:

13 (1) The board determines that any person did any of the
14 following acts regarding the making of the offer:

15 (A) Concealed from the board any property belonging to the
16 estate of any taxpayer or other person liable for the tax.

17 (B) Received, withheld, destroyed, mutilated, or falsified any
18 book, document, or record or made any false statement, relating
19 to the estate or financial condition of the taxpayer or other person
20 liable for the tax.

21 (2) The taxpayer fails to comply with any of the terms and
22 conditions relative to the offer.

23 (l) Any person who, in connection with any offer or compromise
24 under this section, or offer of that compromise to enter into that
25 agreement, willfully does either of the following shall be guilty of
26 a felony and, upon conviction, shall be fined not more than fifty
27 thousand dollars (\$50,000) or imprisoned ~~in the state prison~~
28 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
29 both, together with the costs of investigation and prosecution:

30 (1) Conceals from any officer or employee of this state any
31 property belonging to the estate of a taxpayer or other person liable
32 in respect of the tax.

33 (2) Receives, withholds, destroys, mutilates, or falsifies any
34 book, document, or record, or makes any false statement, relating
35 to the estate or financial condition of the taxpayer or other person
36 liable in respect of the tax.

37 (m) For purposes of this section, "person" means the taxpayer,
38 any member of the taxpayer's family, any corporation, agent,
39 fiduciary, or representative of, or any other individual or entity
40 acting on behalf of, the taxpayer, or any other corporation or entity

1 owned or controlled by the taxpayer, directly or indirectly, or that
2 owns or controls the taxpayer, directly or indirectly.

3 (n) This section shall become operative on January 1, 2013.

4 *SEC. 597. Section 2118.5 of the Unemployment Insurance*
5 *Code is amended to read:*

6 2118.5. Any person required by this code to collect, account
7 for, and pay over any tax or amount required to be withheld who
8 willfully fails to collect or truthfully account for and pay over the
9 tax or amount shall, in addition to other penalties provided by law,
10 be guilty of a felony and, upon conviction thereof, shall be fined
11 an amount not more than twenty thousand dollars (\$20,000), or
12 ~~imprisoned in the state prison pursuant to subdivision (h) of Section~~
13 ~~1170 of the Penal Code~~, or both the fine and imprisonment, at the
14 discretion of the court.

15 *SEC. 598. Section 2478 of the Vehicle Code is amended to*
16 *read:*

17 2478. (a) Any person who is found guilty of violating Section
18 2470, 2472, 2474, or 2476, or the rules and regulations promulgated
19 under those provisions, is subject to imprisonment in the county
20 jail for not more than one year, or a fine of not more than one
21 thousand dollars (\$1,000), or both that imprisonment and fine.

22 (b) If the conviction is a second or subsequent conviction of a
23 violation described in subdivision (a), or the violation is committed
24 with intent to defraud or mislead, the person is subject to
25 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
26 ~~Section 1170 of the Penal Code~~, or a fine of not more than ten
27 thousand dollars (\$10,000), or both that imprisonment and fine.

28 *SEC. 599. Section 2800.4 of the Vehicle Code is amended to*
29 *read:*

30 2800.4. Whenever a person willfully flees or attempts to elude
31 a pursuing peace officer in violation of Section 2800.1, and the
32 person operating the pursued vehicle willfully drives that vehicle
33 on a highway in a direction opposite to that in which the traffic
34 lawfully moves upon that highway, the person upon conviction is
35 punishable by imprisonment for not less than six months nor more
36 than one year in a county jail or by ~~imprisonment in the state prison~~
37 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or
38 by a fine of not less than one thousand dollars (\$1,000) nor more
39 than ten thousand dollars (\$10,000), or by both that fine and
40 imprisonment.

1 SEC. 600. *Section 4463 of the Vehicle Code is amended to*
2 *read:*

3 4463. (a) A person who, with intent to prejudice, damage, or
4 defraud, commits any of the following acts is guilty of a felony
5 and upon conviction thereof shall be punished by imprisonment
6 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of*
7 *the Penal Code* for 16 months or two or three years, or by
8 imprisonment in a county jail for not more than one year:

9 (1) Alters, forges, counterfeits, or falsifies a certificate of
10 ownership, registration card, certificate, license, license plate,
11 device issued pursuant to Section 4853, special plate, or permit
12 provided for by this code or a comparable certificate of ownership,
13 registration card, certificate, license, license plate, device
14 comparable to that issued pursuant to Section 4853, special plate,
15 or permit provided for by a foreign jurisdiction, or alters, forges,
16 counterfeits, or falsifies the document, device, or plate with intent
17 to represent it as issued by the department, or alters, forges,
18 counterfeits, or falsifies with fraudulent intent an endorsement of
19 transfer on a certificate of ownership or other document evidencing
20 ownership, or with fraudulent intent displays or causes or permits
21 to be displayed or have in his or her possession a blank, incomplete,
22 canceled, suspended, revoked, altered, forged, counterfeit, or false
23 certificate of ownership, registration card, certificate, license,
24 license plate, device issued pursuant to Section 4853, special plate,
25 or permit.

26 (2) Utters, publishes, passes, or attempts to pass, as true and
27 genuine, a false, altered, forged, or counterfeited matter listed in
28 paragraph (1) knowing it to be false, altered, forged, or
29 counterfeited.

30 (b) A person who, with intent to prejudice, damage, or defraud,
31 commits any of the following acts is guilty of a misdemeanor, and
32 upon conviction thereof shall be punished by imprisonment in a
33 county jail for six months, a fine of not less than five hundred
34 dollars (\$500) and not more than one thousand dollars (\$1,000),
35 or both that fine and imprisonment, which penalty shall not be
36 suspended:

37 (1) Forges, counterfeits, or falsifies a disabled person placard
38 or a comparable placard relating to parking privileges for disabled
39 persons provided for by a foreign jurisdiction, or forges,

1 counterfeits, or falsifies a disabled person placard with intent to
2 represent it as issued by the department.

3 (2) Passes, or attempts to pass, as true and genuine, a false,
4 forged, or counterfeit disabled person placard knowing it to be
5 false, forged, or counterfeited.

6 (3) Acquires, possesses, sells, or offers for sale a genuine or
7 counterfeit disabled person placard.

8 (c) A person who, with fraudulent intent, displays or causes or
9 permits to be displayed a forged, counterfeit, or false disabled
10 person placard, is subject to the issuance of a notice of parking
11 violation imposing a civil penalty of not less than two hundred
12 fifty dollars (\$250) and not more than one thousand dollars
13 (\$1,000), for which enforcement shall be governed by the
14 procedures set forth in Article 3 (commencing with Section 40200)
15 of Chapter 1 of Division 17 or is guilty of a misdemeanor
16 punishable by imprisonment in a county jail for six months, a fine
17 of not less than two hundred fifty dollars (\$250) and not more than
18 one thousand dollars (\$1,000), or both that fine and imprisonment,
19 which penalty shall not be suspended.

20 (d) For purposes of subdivision (b) or (c), “disabled person
21 placard” means a placard issued pursuant to Section 22511.55 or
22 22511.59.

23 (e) A person who, with intent to prejudice, damage, or defraud,
24 commits any of the following acts is guilty of an infraction, and
25 upon conviction thereof shall be punished by a fine of not less than
26 one hundred dollars (\$100) and not more than two hundred fifty
27 dollars (\$250) for a first offense, not less than two hundred fifty
28 dollars (\$250) and not more than five hundred dollars (\$500) for
29 a second offense, and not less than five hundred dollars (\$500)
30 and not more than one thousand dollars (\$1,000) for a third or
31 subsequent offense, which penalty shall not be suspended:

32 (1) Forges, counterfeits, or falsifies a Clean Air Sticker or a
33 comparable clean air sticker relating to high occupancy vehicle
34 lane privileges provided for by a foreign jurisdiction, or forges,
35 counterfeits, or falsifies a Clean Air Sticker with intent to represent
36 it as issued by the department.

37 (2) Passes, or attempts to pass, as true and genuine, a false,
38 forged, or counterfeit Clean Air Sticker knowing it to be false,
39 forged, or counterfeited.

1 (3) Acquires, possesses, sells, or offers for sale a counterfeit
2 Clean Air Sticker.

3 (4) Acquires, possesses, sells, or offers for sale a genuine Clean
4 Air Sticker separate from the vehicle for which the department
5 issued that sticker.

6 (f) As used in this section, “Clean Air Sticker” means a label
7 or decal issued pursuant to Sections 5205.5 and 21655.9.

8 *SEC. 601. Section 10501 of the Vehicle Code is amended to*
9 *read:*

10 10501. (a) It is unlawful for any person to make or file a false
11 or fraudulent report of theft of a vehicle required to be registered
12 under this code with any law enforcement agency with intent to
13 deceive.

14 (b) If a person has been previously convicted of a violation of
15 subdivision (a), he or she is punishable by imprisonment ~~in the~~
16 ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the*
17 *Penal Code* for 16 months, or two or three years, or in a county
18 jail for not to exceed one year.

19 *SEC. 602. Section 10752 of the Vehicle Code is amended to*
20 *read:*

21 10752. (a) No person shall, with intent to prejudice, damage,
22 injure, or defraud, acquire, possess, sell, or offer for sale any
23 genuine or counterfeit manufacturer’s serial or identification
24 number from or for, or purporting to be from or for, a vehicle or
25 component part thereof.

26 (b) No person shall, with intent to prejudice, damage, injure, or
27 defraud, acquire, possess, sell, or offer for sale any genuine or
28 counterfeit serial or identification number issued by the department,
29 the Department of the California Highway Patrol, or the vehicle
30 registration and titling agency of any foreign jurisdiction which is
31 from or for, or purports to be from or for, a vehicle or component
32 part thereof.

33 (c) Every person convicted of a violation of subdivision (a) or
34 (b) shall be punished by imprisonment ~~in the state prison~~ *pursuant*
35 *to subdivision (h) of Section 1170 of the Penal Code*, or in the
36 county jail for not less than 90 days nor more than one year, and
37 by a fine of not less than two hundred fifty dollars (\$250) nor more
38 than five thousand dollars (\$5,000).

39 *SEC. 603. Section 10801 of the Vehicle Code is amended to*
40 *read:*

1 10801. Any person who knowingly and intentionally owns or
2 operates a chop shop is guilty of a public offense and, upon
3 conviction, shall be punished by imprisonment ~~in the state prison~~
4 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
5 two, three, or four years, or by a fine of not more than fifty
6 thousand dollars (\$50,000), or by both the fine and imprisonment,
7 or by up to one year in the county jail, or by a fine of not more
8 than one thousand dollars (\$1,000), or by both the fine and
9 imprisonment.

10 SEC. 604. *Section 10802 of the Vehicle Code is amended to*
11 *read:*

12 10802. Any person who knowingly alters, counterfeits, defaces,
13 destroys, disguises, falsifies, forges, obliterates, or removes vehicle
14 identification numbers, with the intent to misrepresent the identity
15 or prevent the identification of motor vehicles or motor vehicle
16 parts, for the purpose of sale, transfer, import, or export, is guilty
17 of a public offense and, upon conviction, shall be punished by
18 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
19 *Section 1170 of the Penal Code* for 16 months, or two or three
20 years, or by a fine of not more than twenty-five thousand dollars
21 (\$25,000), or by both the fine and imprisonment, or by up to one
22 year in the county jail, or by a fine of not more than one thousand
23 dollars (\$1,000), or by both the fine and imprisonment.

24 SEC. 605. *Section 10803 of the Vehicle Code is amended to*
25 *read:*

26 10803. (a) Any person who buys with the intent to resell,
27 disposes of, sells, or transfers, more than one motor vehicle or
28 parts from more than one motor vehicle, with the knowledge that
29 the vehicle identification numbers of the motor vehicles or motor
30 vehicle parts have been altered, counterfeited, defaced, destroyed,
31 disguised, falsified, forged, obliterated, or removed for the purpose
32 of misrepresenting the identity or preventing the identification of
33 the motor vehicles or motor vehicle parts, is guilty of a public
34 offense and, upon conviction, shall be punished by imprisonment
35 ~~in the state prison~~ *pursuant to subdivision (h) of Section 1170 of*
36 *the Penal Code* for two, four, or six years, or by a fine of not more
37 than sixty thousand dollars (\$60,000), or by both the fine and
38 imprisonment, or by up to one year in the county jail, or by a fine
39 of not more than one thousand dollars (\$1,000), or by both the fine
40 and imprisonment.

(b) Any person who possesses, for the purpose of sale, transfer, import, or export, more than one motor vehicle or parts from more than one motor vehicle, with the knowledge that the vehicle identification numbers of the motor vehicles or motor vehicle parts have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed for the purpose of misrepresenting the identity or preventing the identification of the motor vehicles or motor vehicle parts, is guilty of a public offense and, upon conviction, shall be punished by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years, or by a fine of not more than thirty thousand dollars (\$30,000), or by both the fine and imprisonment, or by imprisonment in the county jail not exceeding one year or by a fine of not more than one thousand dollars (\$1,000) or by both the fine and imprisonment.

SEC. 606. Section 10851 of the Vehicle Code is amended to read:

10851. (a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.

(b) If the vehicle is (1) an ambulance, as defined in subdivision (a) of Section 165, (2) a distinctively marked vehicle of a law enforcement agency or fire department, taken while the ambulance or vehicle is on an emergency call and this fact is known to the person driving or taking, or any person who is party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, or (3) a vehicle which has been modified for the use of a disabled veteran or any other disabled person and which displays a distinguishing license plate or placard issued pursuant to Section 22511.5 or 22511.9 and this fact is known or should reasonably have been known to the person driving or taking, or any person

1 who is party or an accessory in the driving or unauthorized taking
2 or stealing, the offense is a felony punishable by imprisonment in
3 the state prison pursuant to subdivision (h) of Section 1170 of the
4 Penal Code for two, three, or four years or by a fine of not more
5 than ten thousand dollars (\$10,000), or by both the fine and
6 imprisonment.

7 (c) In any prosecution for a violation of subdivision (a) or (b),
8 the consent of the owner of a vehicle to its taking or driving shall
9 not in any case be presumed or implied because of the owner's
10 consent on a previous occasion to the taking or driving of the
11 vehicle by the same or a different person.

12 (d) The existence of any fact which makes subdivision (b)
13 applicable shall be alleged in the accusatory pleading, and either
14 admitted by the defendant in open court, or found to be true by the
15 jury trying the issue of guilt or by the court where guilt is
16 established by plea of guilty or nolo contendere or by trial by the
17 court sitting without a jury.

18 (e) Any person who has been convicted of one or more previous
19 felony violations of this section, or felony grand theft of a vehicle
20 in violation of subdivision (d) of Section 487 of the Penal Code,
21 former subdivision (3) of Section 487 of the Penal Code, as that
22 section read prior to being amended by Section 4 of Chapter 1125
23 of the Statutes of 1993, or Section 487h of the Penal Code, is
24 punishable as set forth in Section 666.5 of the Penal Code. The
25 existence of any fact that would bring a person under Section 666.5
26 of the Penal Code shall be alleged in the information or indictment
27 and either admitted by the defendant in open court, or found to be
28 true by the jury trying the issue of guilt or by the court where guilt
29 is established by plea of guilty or nolo contendere, or by trial by
30 the court sitting without a jury.

31 (f) This section shall become operative on January 1, 1997.

32 *SEC. 607. Section 21464 of the Vehicle Code is amended to*
33 *read:*

34 21464. (a) A person, without lawful authority, may not deface,
35 injure, attach any material or substance to, knock down, or remove,
36 nor may a person shoot at, any official traffic control device, traffic
37 guidepost, traffic signpost, motorist callbox, or historical marker
38 placed or erected as authorized or required by law, nor may a
39 person without lawful authority deface, injure, attach any material

1 or substance to, or remove, nor may a person shoot at, any
2 inscription, shield, or insignia on any device, guide, or marker.

3 (b) A person may not use, and a vehicle, other than an authorized
4 emergency vehicle or a public transit passenger vehicle, may not
5 be equipped with, any device, including, but not limited to, a
6 mobile infrared transmitter, that is capable of sending a signal that
7 interrupts or changes the sequence patterns of an official traffic
8 control signal unless that device or use is authorized by the
9 Department of Transportation pursuant to Section 21350 or by
10 local authorities pursuant to Section 21351.

11 (c) A person may not buy, possess, manufacture, install, sell,
12 offer for sale, or otherwise distribute a device described in
13 subdivision (b), including, but not limited to, a mobile infrared
14 transmitter (MIRT), unless the purchase, possession, manufacture,
15 installation, sale, offer for sale, or distribution is for the use of the
16 device by a peace officer or other person authorized to operate an
17 authorized emergency vehicle or a public transit passenger vehicle,
18 in the scope of his or her duties.

19 (d) Any willful violation of subdivision (a), (b), or (c) that results
20 in injury to, or the death of, a person is punishable by imprisonment
21 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
22 *the Penal Code*, or by imprisonment in a county jail for a period
23 of not more than six months, and by a fine of not less than five
24 thousand dollars (\$5,000) nor more than ten thousand dollars
25 (\$10,000).

26 (e) Any willful violation of subdivision (a), (b), or (c) that does
27 not result in injury to, or the death of, a person is punishable by a
28 fine of not more than five thousand dollars (\$5,000).

29 (f) The court shall allow the offender to perform community
30 service designated by the court in lieu of all or part of any fine
31 imposed under this section.

32 *SEC. 608. Section 21651 of the Vehicle Code is amended to*
33 *read:*

34 21651. (a) Whenever a highway has been divided into two or
35 more roadways by means of intermittent barriers or by means of
36 a dividing section of not less than two feet in width, either unpaved
37 or delineated by curbs, double-parallel lines, or other markings on
38 the roadway, it is unlawful to do either of the following:

39 (1) To drive any vehicle over, upon, or across the dividing
40 section.

1 (2) To make any left, semicircular, or U-turn with the vehicle
2 on the divided highway, except through an opening in the barrier
3 designated and intended by public authorities for the use of vehicles
4 or through a plainly marked opening in the dividing section.

5 (b) It is unlawful to drive any vehicle upon a highway, except
6 to the right of an intermittent barrier or a dividing section which
7 separates two or more opposing lanes of traffic. Except as otherwise
8 provided in subdivision (c), a violation of this subdivision is a
9 misdemeanor.

10 (c) Any willful violation of subdivision (b) which results in
11 injury to, or death of, a person shall be punished by imprisonment
12 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
13 ~~the Penal Code~~, or imprisonment in a county jail for a period of
14 not more than six months.

15 *SEC. 609. Section 23104 of the Vehicle Code is amended to*
16 *read:*

17 23104. (a) Except as provided in subdivision (b), whenever
18 reckless driving of a vehicle proximately causes bodily injury to
19 a person other than the driver, the person driving the vehicle shall,
20 upon conviction thereof, be punished by imprisonment in the
21 county jail for not less than 30 days nor more than six months or
22 by a fine of not less than two hundred twenty dollars (\$220) nor
23 more than one thousand dollars (\$1,000), or by both the fine and
24 imprisonment.

25 (b) A person convicted of reckless driving that proximately
26 causes great bodily injury, as defined in Section 12022.7 of the
27 Penal Code, to a person other than the driver, who previously has
28 been convicted of a violation of Section 23103, 23104, 23105,
29 23109, 23109.1, 23152, or 23153, shall be punished by
30 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
31 ~~Section 1170 of the Penal Code~~, by imprisonment in the county
32 jail for not less than 30 days nor more than six months or by a fine
33 of not less than two hundred twenty dollars (\$220) nor more than
34 one thousand dollars (\$1,000) or by both the fine and
35 imprisonment.

36 *SEC. 610. Section 23105 of the Vehicle Code is amended to*
37 *read:*

38 23105. (a) A person convicted of reckless driving in violation
39 of Section 23103 that proximately causes one or more of the
40 injuries specified in subdivision (b) to a person other than the

1 driver, shall be punished by imprisonment ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170 of the Penal Code*, or
3 by imprisonment in a county jail for not less than 30 days nor more
4 than six months, or by a fine of not less than two hundred twenty
5 dollars (\$220) nor more than one thousand dollars (\$1,000), or by
6 both that fine and imprisonment.

7 (b) This section applies to all of the following injuries:

8 (1) A loss of consciousness.

9 (2) A concussion.

10 (3) A bone fracture.

11 (4) A protracted loss or impairment of function of a bodily
12 member or organ.

13 (5) A wound requiring extensive suturing.

14 (6) A serious disfigurement.

15 (7) Brain injury.

16 (8) Paralysis.

17 (c) This section does not preclude or prohibit prosecution under
18 any other provision of law.

19 *SEC. 611. Section 23109 of the Vehicle Code is amended to*
20 *read:*

21 23109. (a) A person shall not engage in a motor vehicle speed
22 contest on a highway. As used in this section, a motor vehicle
23 speed contest includes a motor vehicle race against another vehicle,
24 a clock, or other timing device. For purposes of this section, an
25 event in which the time to cover a prescribed route of more than
26 20 miles is measured, but where the vehicle does not exceed the
27 speed limits, is not a speed contest.

28 (b) A person shall not aid or abet in any motor vehicle speed
29 contest on any highway.

30 (c) A person shall not engage in a motor vehicle exhibition of
31 speed on a highway, and a person shall not aid or abet in a motor
32 vehicle exhibition of speed on any highway.

33 (d) A person shall not, for the purpose of facilitating or aiding
34 or as an incident to any motor vehicle speed contest or exhibition
35 upon a highway, in any manner obstruct or place a barricade or
36 obstruction or assist or participate in placing a barricade or
37 obstruction upon any highway.

38 (e) (1) A person convicted of a violation of subdivision (a) shall
39 be punished by imprisonment in a county jail for not less than 24
40 hours nor more than 90 days or by a fine of not less than three

1 hundred fifty-five dollars (\$355) nor more than one thousand
2 dollars (\$1,000), or by both that fine and imprisonment. That
3 person shall also be required to perform 40 hours of community
4 service. The court may order the privilege to operate a motor
5 vehicle suspended for 90 days to six months, as provided in
6 paragraph (8) of subdivision (a) of Section 13352. The person's
7 privilege to operate a motor vehicle may be restricted for 90 days
8 to six months to necessary travel to and from that person's place
9 of employment and, if driving a motor vehicle is necessary to
10 perform the duties of the person's employment, restricted to driving
11 in that person's scope of employment. This subdivision does not
12 interfere with the court's power to grant probation in a suitable
13 case.

14 (2) If a person is convicted of a violation of subdivision (a) and
15 that violation proximately causes bodily injury to a person other
16 than the driver, the person convicted shall be punished by
17 imprisonment in a county jail for not less than 30 days nor more
18 than six months or by a fine of not less than five hundred dollars
19 (\$500) nor more than one thousand dollars (\$1,000), or by both
20 that fine and imprisonment.

21 (f) (1) If a person is convicted of a violation of subdivision (a)
22 for an offense that occurred within five years of the date of a prior
23 offense that resulted in a conviction of a violation of subdivision
24 (a), that person shall be punished by imprisonment in a county jail
25 for not less than four days nor more than six months, and by a fine
26 of not less than five hundred dollars (\$500) nor more than one
27 thousand dollars (\$1,000).

28 (2) If the perpetration of the most recent offense within the
29 five-year period described in paragraph (1) proximately causes
30 bodily injury to a person other than the driver, a person convicted
31 of that second violation shall be imprisoned in a county jail for
32 not less than 30 days nor more than six months and by a fine of
33 not less than five hundred dollars (\$500) nor more than one
34 thousand dollars (\$1,000).

35 (3) If the perpetration of the most recent offense within the
36 five-year period described in paragraph (1) proximately causes
37 serious bodily injury, as defined in paragraph (4) of subdivision
38 (f) of Section 243 of the Penal Code, to a person other than the
39 driver, a person convicted of that second violation shall be
40 imprisoned in the state prison pursuant to subdivision (h) of Section

1 *1170 of the Penal Code*, or in a county jail for not less than 30
2 days nor more than one year, and by a fine of not less than five
3 hundred dollars (\$500) nor more than one thousand dollars
4 (\$1,000).

5 (4) The court shall order the privilege to operate a motor vehicle
6 of a person convicted under paragraph (1), (2), or (3) suspended
7 for a period of six months, as provided in paragraph (9) of
8 subdivision (a) of Section 13352. In lieu of the suspension, the
9 person's privilege to operate a motor vehicle may be restricted for
10 six months to necessary travel to and from that person's place of
11 employment and, if driving a motor vehicle is necessary to perform
12 the duties of the person's employment, restricted to driving in that
13 person's scope of employment.

14 (5) This subdivision does not interfere with the court's power
15 to grant probation in a suitable case.

16 (g) If the court grants probation to a person subject to
17 punishment under subdivision (f), in addition to subdivision (f)
18 and any other terms and conditions imposed by the court, which
19 may include a fine, the court shall impose as a condition of
20 probation that the person be confined in a county jail for not less
21 than 48 hours nor more than six months. The court shall order the
22 person's privilege to operate a motor vehicle to be suspended for
23 a period of six months, as provided in paragraph (9) of subdivision
24 (a) of Section 13352 or restricted pursuant to subdivision (f).

25 (h) If a person is convicted of a violation of subdivision (a) and
26 the vehicle used in the violation is registered to that person, the
27 vehicle may be impounded at the registered owner's expense for
28 not less than one day nor more than 30 days.

29 (i) A person who violates subdivision (b), (c), or (d) shall upon
30 conviction of that violation be punished by imprisonment in a
31 county jail for not more than 90 days, by a fine of not more than
32 five hundred dollars (\$500), or by both that fine and imprisonment.

33 (j) If a person's privilege to operate a motor vehicle is restricted
34 by a court pursuant to this section, the court shall clearly mark the
35 restriction and the dates of the restriction on that person's driver's
36 license and promptly notify the Department of Motor Vehicles of
37 the terms of the restriction in a manner prescribed by the
38 department. The Department of Motor Vehicles shall place that
39 restriction in the person's records in the Department of Motor
40 Vehicles and enter the restriction on a license subsequently issued

1 by the Department of Motor Vehicles to that person during the
2 period of the restriction.

3 (k) The court may order that a person convicted under this
4 section, who is to be punished by imprisonment in a county jail,
5 be imprisoned on days other than days of regular employment of
6 the person, as determined by the court.

7 (l) This section shall be known and may be cited as the Louis
8 Friend Memorial Act.

9 *SEC. 612. Section 23109.1 of the Vehicle Code is amended to*
10 *read:*

11 23109.1. (a) A person convicted of engaging in a motor vehicle
12 speed contest in violation of subdivision (a) of Section 23109 that
13 proximately causes one or more of the injuries specified in
14 subdivision (b) to a person other than the driver, shall be punished
15 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
16 *Section 1170 of the Penal Code*, or by imprisonment in a county
17 jail for not less than 30 days nor more than six months, or by a
18 fine of not less than five hundred dollars (\$500) nor more than one
19 thousand dollars (\$1,000), or by both that fine and imprisonment.

20 (b) This section applies to all of the following injuries:

21 (1) A loss of consciousness.

22 (2) A concussion.

23 (3) A bone fracture.

24 (4) A protracted loss or impairment of function of a bodily
25 member or organ.

26 (5) A wound requiring extensive suturing.

27 (6) A serious disfigurement.

28 (7) Brain injury.

29 (8) Paralysis.

30 (c) This section does not preclude or prohibit prosecution under
31 any other provision of law.

32 *SEC. 613. Section 23110 of the Vehicle Code is amended to*
33 *read:*

34 23110. (a) Any person who throws any substance at a vehicle
35 or any occupant thereof on a highway is guilty of a misdemeanor.

36 (b) Any person who with intent to do great bodily injury
37 maliciously and willfully throws or projects any rock, brick, bottle,
38 metal or other missile, or projects any other substance capable of
39 doing serious bodily harm at such vehicle or occupant thereof is
40 guilty of a felony and upon conviction shall be punished by

1 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
2 ~~Section 1170 of the Penal Code.~~

3 SEC. 614. Section 23550 of the Vehicle Code is amended to
4 read:

5 23550. (a) If a person is convicted of a violation of Section
6 23152 and the offense occurred within 10 years of three or more
7 separate violations of Section 23103, as specified in Section
8 23103.5, or Section 23152 or 23153, or any combination thereof,
9 that resulted in convictions, that person shall be punished by
10 ~~imprisonment in the state prison pursuant to subdivision (h) of~~
11 ~~Section 1170 of the Penal Code~~, or in a county jail for not less than
12 180 days nor more than one year, and by a fine of not less than
13 three hundred ninety dollars (\$390) nor more than one thousand
14 dollars (\$1,000). The person's privilege to operate a motor vehicle
15 shall be revoked by the Department of Motor Vehicles pursuant
16 to paragraph (7) of subdivision (a) of Section 13352. The court
17 shall require the person to surrender the driver's license to the
18 court in accordance with Section 13550.

19 (b) A person convicted of a violation of Section 23152
20 punishable under this section shall be designated as a habitual
21 traffic offender for a period of three years, subsequent to the
22 conviction. The person shall be advised of this designation pursuant
23 to subdivision (b) of Section 13350.

24 SEC. 615. Section 42000 of the Vehicle Code is amended to
25 read:

26 42000. Unless a different penalty is expressly provided by this
27 code, every person convicted of a felony for a violation of any
28 provision of this code shall be punished by a fine of not less than
29 one thousand dollars (\$1,000) or more than ten thousand dollars
30 (\$10,000), or by ~~imprisonment in the state prison pursuant to~~
31 ~~subdivision (h) of Section 1170 of the Penal Code~~, or by both such
32 fine and imprisonment.

33 SEC. 616. Section 13387 of the Water Code is amended to
34 read:

35 13387. (a) Any person who knowingly or negligently does
36 any of the following is subject to criminal penalties as provided
37 in subdivisions (b), (c), and (d):

38 (1) Violates Section 13375 or 13376.

1 (2) Violates any waste discharge requirements or dredged or
2 fill material permit issued pursuant to this chapter or any water
3 quality certification issued pursuant to Section 13160.

4 (3) Violates any order or prohibition issued pursuant to Section
5 13243 or 13301, if the activity subject to the order or prohibition
6 is subject to regulation under this chapter.

7 (4) Violates any requirement of Section 301, 302, 306, 307,
8 308, 318, 401, or 405 of the Clean Water Act (33 U.S.C. Sec. 1311,
9 1312, 1316, 1317, 1318, 1328, 1341, or 1345), as amended.

10 (5) Introduces into a sewer system or into a publicly owned
11 treatment works any pollutant or hazardous substances that the
12 person knew or reasonably should have known could cause
13 personal injury or property damage.

14 (6) Introduces any pollutant or hazardous substance into a sewer
15 system or into a publicly owned treatment works, except in
16 accordance with any applicable pretreatment requirements, which
17 causes the treatment works to violate waste discharge requirements.

18 (b) Any person who negligently commits any of the violations
19 set forth in subdivision (a) shall, upon conviction, be punished by
20 a fine of not less than five thousand dollars (\$5,000), nor more
21 than twenty-five thousand dollars (\$25,000), for each day in which
22 the violation occurs, by imprisonment for not more than one year
23 in a county jail, or by both that fine and imprisonment. If a
24 conviction of a person is for a violation committed after a first
25 conviction of the person under this subdivision, subdivision (c),
26 or subdivision (d), punishment shall be by a fine of not more than
27 fifty thousand dollars (\$50,000) for each day in which the violation
28 occurs, by imprisonment ~~in the state prison pursuant to subdivision~~
29 *(h) of Section 1170 of the Penal Code* for 16, 20, or 24 months, or
30 by both that fine and imprisonment.

31 (c) Any person who knowingly commits any of the violations
32 set forth in subdivision (a) shall, upon conviction, be punished by
33 a fine of not less than five thousand dollars (\$5,000), nor more
34 than fifty thousand dollars (\$50,000), for each day in which the
35 violation occurs, by imprisonment ~~in the state prison pursuant to~~
36 *subdivision (h) of Section 1170 of the Penal Code*, or by both that
37 fine and imprisonment. If a conviction of a person is for a violation
38 committed after a first conviction of the person under this
39 subdivision or subdivision (d), punishment shall be by a fine of
40 not more than one hundred thousand dollars (\$100,000) for each

1 day in which the violation occurs, by imprisonment ~~in the state~~
2 ~~prison pursuant to subdivision (h) of Section 1170 of the Penal~~
3 ~~Code~~ for two, four, or six years, or by both that fine and
4 imprisonment.

5 (d) (1) Any person who knowingly commits any of the
6 violations set forth in subdivision (a), and who knows at the time
7 that the person thereby places another person in imminent danger
8 of death or serious bodily injury, shall, upon conviction, be
9 punished by a fine of not more than two hundred fifty thousand
10 dollars (\$250,000), imprisonment ~~in the state prison pursuant to~~
11 ~~subdivision (h) of Section 1170 of the Penal Code~~ for 5, 10, or 15
12 years, or by both that fine and imprisonment. A person that is an
13 organization shall, upon conviction under this subdivision, be
14 subject to a fine of not more than one million dollars (\$1,000,000).
15 If a conviction of a person is for a violation committed after a first
16 conviction of the person under this subdivision, the punishment
17 shall be by a fine of not more than five hundred thousand dollars
18 (\$500,000), by imprisonment ~~in the state prison pursuant to~~
19 ~~subdivision (h) of Section 1170 of the Penal Code~~ for 10, 20, or
20 30 years, or by both that fine and imprisonment. A person that is
21 an organization shall, upon conviction for a violation committed
22 after a first conviction of the person under this subdivision, be
23 subject to a fine of not more than two million dollars (\$2,000,000).
24 Any fines imposed pursuant to this subdivision shall be in addition
25 to any fines imposed pursuant to subdivision (c).

26 (2) In determining whether a defendant who is an individual
27 knew that the defendant's conduct placed another person in
28 imminent danger of death or serious bodily injury, the defendant
29 is responsible only for actual awareness or actual belief that the
30 defendant possessed, and knowledge possessed by a person other
31 than the defendant, but not by the defendant personally, cannot be
32 attributed to the defendant.

33 (e) Any person who knowingly makes any false statement,
34 representation, or certification in any record, report, plan, notice
35 to comply, or other document filed with a regional board or the
36 state board, or who knowingly falsifies, tampers with, or renders
37 inaccurate any monitoring device or method required under this
38 division shall be punished by a fine of not more than twenty-five
39 thousand dollars (\$25,000), by imprisonment ~~in the state prison~~
40 ~~pursuant to subdivision (h) of Section 1170 of the Penal Code~~ for

1 16, 20, or 24 months, or by both that fine and imprisonment. If a
 2 conviction of a person is for a violation committed after a first
 3 conviction of the person under this subdivision, punishment shall
 4 be by a fine of not more than twenty-five thousand dollars
 5 (\$25,000) per day of violation, by imprisonment ~~in the state prison~~
 6 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
 7 two, three, or four years, or by both that fine and imprisonment.

8 (f) For purposes of this section, a single operational upset which
 9 leads to simultaneous violations of more than one pollutant
 10 parameter shall be treated as a single violation.

11 (g) For purposes of this section, “organization,” “serious bodily
 12 injury,” “person,” and “hazardous substance” shall have the same
 13 meaning as in Section 309(c) of the Clean Water Act (33 U.S.C.
 14 Sec. 1319(c)), as amended.

15 (h) (1) Subject to paragraph (2), funds collected pursuant to
 16 this section shall be deposited in the State Water Pollution Cleanup
 17 and Abatement Account.

18 (2) (A) Notwithstanding any other provision of law, fines
 19 collected for a violation of a water quality certification in
 20 accordance with paragraph (2) of subdivision (a) or for a violation
 21 of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in
 22 accordance with paragraph (4) of subdivision (a) shall be deposited
 23 in the Water Discharge Permit Fund and separately accounted for
 24 in that fund.

25 (B) The funds described in subparagraph (A) shall be expended
 26 by the state board, upon appropriation by the Legislature, to assist
 27 regional boards, and other public agencies with authority to clean
 28 up waste or abate the effects of the waste, in cleaning up or abating
 29 the effects of the waste on waters of the state, or for the purposes
 30 authorized in Section 13443.

31 *SEC. 617. Section 871.5 of the Welfare and Institutions Code*
 32 *is amended to read:*

33 871.5. (a) Except as authorized by law, or when authorized
 34 by the person in charge of any county juvenile hall, ranch, camp,
 35 or forestry camp, or by an officer of any juvenile hall or camp
 36 empowered by the person in charge to give that authorization, any
 37 person who knowingly brings or sends into, or who knowingly
 38 assists in bringing into, or sending into, any county juvenile hall,
 39 ranch, camp, or forestry camp, or any person who while confined
 40 in any of those institutions possesses therein, any controlled

1 substance, the possession of which is prohibited by Division 10
2 (commencing with Section 11000) of the Health and Safety Code,
3 any firearm, weapon, or explosive of any kind, or any tear gas or
4 tear gas weapon shall be punished by imprisonment in a county
5 jail for not more than one year or by imprisonment ~~in the state~~
6 ~~prison~~ pursuant to subdivision (h) of Section 1170 of the Penal
7 Code.

8 (b) Except as otherwise authorized in the manner provided in
9 subdivision (a), any person who knowingly uses tear gas or uses
10 a tear gas weapon in an institution or camp specified in subdivision
11 (a) is guilty of a felony.

12 (c) A sign shall be posted at the entrance of each county juvenile
13 hall, ranch, camp, or forestry camp specifying the conduct
14 prohibited by this section and the penalties therefor.

15 (d) Except as otherwise authorized in the manner provided in
16 subdivision (a), any person who knowingly brings or sends into,
17 or who knowingly assists in bringing into, or sending into, any
18 county juvenile hall, ranch, camp, or forestry camp, or any person
19 who while confined in such an institution knowingly possesses
20 therein, any alcoholic beverage shall be guilty of a misdemeanor.

21 (e) This section shall not be construed to preclude or in any way
22 limit the applicability of any other law proscribing a course of
23 conduct also proscribed by this section.

24 SEC. 618. *Section 1001.5 of the Welfare and Institutions Code*
25 *is amended to read:*

26 1001.5. (a) Except when authorized by law, or when authorized
27 by the person in charge of an institution or camp administered by
28 the Youth Authority, or by an officer of the institution or camp
29 empowered by the person in charge of the institution or camp to
30 give that authorization, any person who knowingly brings or sends
31 into, or who knowingly assists in bringing into, or sending into,
32 any institution or camp, or the grounds belonging to any institution
33 or camp, administered by the Youth Authority, or any person who,
34 while confined in the institution or camp knowingly possesses
35 therein, any controlled substance, the possession of which is
36 prohibited by Division 10 (commencing with Section 11000) of
37 the Health and Safety Code; any alcoholic beverage; any firearm,
38 weapon or explosive of any kind; or any tear gas or tear gas weapon
39 shall be punished by imprisonment in a county jail for not more

1 than one year or by imprisonment ~~in the state prison~~ pursuant to
2 subdivision (h) of Section 1170 of the Penal Code.

3 (b) Except as otherwise authorized in the manner provided in
4 subdivision (a), any person who knowingly uses tear gas or uses
5 a tear gas weapon in any institution or camp specified in
6 subdivision (a) is guilty of a felony.

7 (c) This section shall not be construed to preclude or in any way
8 limit the applicability of any other law proscribing a course of
9 conduct also proscribed by this section.

10 SEC. 619. Section 1710.5 is added to the Welfare and
11 Institutions Code, to read:

12 1710.5. Notwithstanding any other law, on and after July 1,
13 2011, a county may enter into a memorandum of understanding
14 with the state to provide for the admission of minors adjudicated
15 for an offense listed under subdivision (b) of Section 707 to the
16 Division of Juvenile Justice.

17 SEC. 620. Section 1731.5 of the Welfare and Institutions Code
18 is amended to read:

19 1731.5. (a) After certification to the Governor as provided in
20 this article, a court may commit to the Division of Juvenile
21 Facilities any person who meets all of the following:

22 (1) Is convicted of an offense described in subdivision (b) of
23 Section 707 or subdivision (c) of Section 290.008 of the Penal
24 Code.

25 (2) Is found to be less than 21 years of age at the time of
26 apprehension.

27 (3) Is not sentenced to death, imprisonment for life, with or
28 without the possibility of parole, whether or not pursuant to Section
29 190 of the Penal Code, imprisonment for 90 days or less, or the
30 payment of a fine, or after having been directed to pay a fine,
31 defaults in the payment thereof, and is subject to imprisonment
32 for more than 90 days under the judgment.

33 (4) Is not granted probation, or was granted probation and that
34 probation is revoked and terminated.

35 (b) The Division of Juvenile Facilities shall accept a person
36 committed to it pursuant to this article if it believes that the person
37 can be materially benefitted by its reformatory and educational
38 discipline, and if it has adequate facilities to provide that care.

39 (c) Any person under 18 years of age who is not committed to
40 the division pursuant to this section may be transferred to the

1 authority by the Secretary of the Department of Corrections and
2 Rehabilitation with the approval of the Chief Deputy Secretary for
3 the Division of Juvenile Justice. In sentencing a person under 18
4 years of age, the court may order that the person shall be transferred
5 to the custody of the Division of Juvenile Facilities pursuant to
6 this subdivision. If the court makes this order and the division fails
7 to accept custody of the person, the person shall be returned to
8 court for resentencing. The transfer shall be solely for the purposes
9 of housing the inmate, allowing participation in the programs
10 available at the institution by the inmate, and allowing division
11 parole supervision of the inmate, who, in all other aspects shall be
12 deemed to be committed to the Department of Corrections and
13 Rehabilitation and shall remain subject to the jurisdiction of the
14 Secretary of the Department of Corrections and Rehabilitation and
15 the Board of Parole Hearings. Notwithstanding subdivision (b) of
16 Section 2900 of the Penal Code, the secretary, with the concurrence
17 of the chief deputy secretary, may designate a facility under the
18 jurisdiction of the chief deputy secretary as a place of reception
19 for any person described in this subdivision.

20 The chief deputy secretary shall have the same powers with
21 respect to an inmate transferred pursuant to this subdivision as if
22 the inmate had been committed or transferred to the Division of
23 Juvenile Facilities either under the Arnold-Kennick Juvenile Court
24 Law or subdivision (a).

25 The duration of the transfer shall extend until any of the
26 following occurs:

27 (1) The chief deputy secretary orders the inmate returned to the
28 Department of Corrections and Rehabilitation.

29 (2) The inmate is ordered discharged by the Board of Parole
30 Hearings.

31 (3) The inmate reaches 18 years of age. However, if the inmate's
32 period of incarceration would be completed on or before the
33 inmate's 21st birthday, the chief deputy secretary may continue
34 to house the inmate until the period of incarceration is completed.

35 (d) *Except for counties that have entered into a memorandum*
36 *of understanding pursuant to Section 1710.5, on and after July 1,*
37 *2011, the Division of Juvenile Justice shall no longer accept any*
38 *juvenile offender commitments from the juvenile courts.*

39 SEC. 621. *Section 1768.7 of the Welfare and Institutions Code*
40 *is amended to read:*

1 1768.7. (a) Any person committed to the authority who escapes
 2 or attempts to escape from the institution or facility in which he
 3 or she is confined, who escapes or attempts to escape while being
 4 conveyed to or from such an institution or facility, who escapes
 5 or attempts to escape while outside or away from such an institution
 6 or facility under custody of Youth Authority officials, officers, or
 7 employees, or who, with intent to abscond from the custody of the
 8 Youth Authority, fails to return to such an institution or facility at
 9 the prescribed time while outside or away from the institution or
 10 facility on furlough or temporary release, is guilty of a felony.

11 (b) Any offense set forth in subdivision (a) which is
 12 accomplished by force or violence is punishable by imprisonment
 13 in the state prison for a term of two, four, or six years. Any offense
 14 set forth in subdivision (a) which is accomplished without force
 15 or violence is punishable by imprisonment ~~in the state prison~~
 16 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
 17 a term of 16 months, two or three years or in the county jail not
 18 exceeding one year.

19 (c) For purposes of this section, “committed to the authority”
 20 means a commitment to the Youth Authority pursuant to Section
 21 731 or 1731.5; a remand to the custody of the Youth Authority
 22 pursuant to Section 707.2; a placement at the Youth Authority
 23 pursuant to Section 704, 1731.6, or 1753.1; or a transfer to the
 24 custody of the Youth Authority pursuant to subdivision (c) of
 25 Section 1731.5.

26 *SEC. 622. Section 1768.85 of the Welfare and Institutions Code*
 27 *is amended to read:*

28 1768.85. (a) Every person confined under the jurisdiction of
 29 the Department of the Youth Authority who commits a battery by
 30 gassing upon the person of any peace officer, as defined in Chapter
 31 4.5 (commencing with Section 830) of Title 3 of Part 2, or
 32 employee of the institution is guilty of aggravated battery and shall
 33 be punished by imprisonment in a county jail or by imprisonment
 34 ~~in the state prison pursuant to subdivision (h) of Section 1170 of~~
 35 *the Penal Code* for two, three, or four years.

36 (b) For purposes of this section, “gassing” means intentionally
 37 placing or throwing, or causing to be placed or thrown, upon the
 38 person of another, any human excrement or other bodily fluids or
 39 bodily substances or any mixture containing human excrement or

1 other bodily fluids or bodily substances that results in actual contact
2 with the person's skin or membranes.

3 (c) The person in charge of the institution under the jurisdiction
4 of the Department of the Youth Authority shall use every available
5 means to immediately investigate all reported or suspected
6 violations of subdivision (a), including, but not limited to, the use
7 of forensically acceptable means of preserving and testing the
8 suspected gassing substance to confirm the presence of human
9 excrement or other bodily fluids or bodily substances. If there is
10 probable cause to believe that a ward has violated subdivision (a),
11 the chief medical officer of the institution under the jurisdiction
12 of the Department of the Youth Authority, or his or her designee,
13 may, when he or she deems it medically necessary to protect the
14 health of an officer or employee who may have been subject to a
15 violation of this section, order the ward to receive an examination
16 or test for hepatitis or tuberculosis or both hepatitis and tuberculosis
17 on either a voluntary or involuntary basis immediately after the
18 event, and periodically thereafter as determined to be necessary
19 by the medical officer in order to ensure that further hepatitis or
20 tuberculosis transmission does not occur. These decisions shall be
21 consistent with an occupational exposure as defined by the Center
22 for Disease Control and Prevention. The results of any examination
23 or test shall be provided to the officer or employee who has been
24 subject to a reported or suspected violation of this section. Nothing
25 in this subdivision shall be construed to otherwise supersede the
26 operation of Title 8 (commencing with Section 7500). Any person
27 performing tests, transmitting test results, or disclosing information
28 pursuant to this section shall be immune from civil liability for
29 any action taken in accordance with this section.

30 (d) The person in charge of the institution under the jurisdiction
31 of the Department of the Youth Authority shall refer all reports
32 for which there is probable cause to believe that the inmate has
33 violated subdivision (a) to the local district attorney for prosecution.

34 (e) The Department of the Youth Authority shall report to the
35 Legislature, by January 1, 2003, its findings and recommendations
36 on gassing incidents at the department's facilities and the medical
37 testing authorized by this section. The report shall include, but not
38 be limited to, all of the following:

39 (1) The total number of gassing incidents at each youth
40 correctional facility up to the date of the report.

1 (2) The disposition of each gassing incident, including the
2 administrative penalties imposed, the number of incidents that are
3 prosecuted, and the results of those prosecutions, including any
4 penalties imposed.

5 (3) A profile of the wards who commit the batteries by gassing,
6 including the number of wards who have one or more prior serious
7 or violent felony convictions.

8 (4) Efforts that the department has taken to limit these incidents,
9 including staff training and the use of protective clothing and
10 goggles.

11 (5) The results and costs of the medical testing authorized by
12 this section.

13 (f) Nothing in this section shall preclude prosecution under both
14 this section and any other provision of law.

15 *SEC. 623. Section 3002 of the Welfare and Institutions Code*
16 *is amended to read:*

17 3002. Every person committed pursuant to this chapter or
18 former Chapter 11 (commencing with Section 6399) of Title 7 of
19 the Penal Code who escapes or attempts to escape from lawful
20 custody is guilty of a crime punishable by imprisonment ~~in the~~
21 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
22 *Penal Code*. This section does not apply to unauthorized absence
23 from a halfway house.

24 *SEC. 624. Section 7326 of the Welfare and Institutions Code*
25 *is amended to read:*

26 7326. Any person who willfully assists any judicially
27 committed or remanded patient of a state hospital or other public
28 or private mental health facility to escape, to attempt to escape
29 therefrom, or to resist being returned from a leave of absence shall
30 be punished by imprisonment ~~in the state prison pursuant to~~
31 *subdivision (h) of Section 1170 of the Penal Code*, a fine of not
32 more than ten thousand dollars (\$10,000), or both such
33 imprisonment and fine; or by imprisonment in a county jail for a
34 period of not more than one year, a fine of not more than two
35 thousand dollars (\$2,000), or both such imprisonment and fine.

36 *SEC. 625. Section 8100 of the Welfare and Institutions Code,*
37 *as amended by Section 16 of Chapter 1326 of the Statutes of 1992,*
38 *is amended to read:*

39 8100. (a) A person shall not have in his or her possession or
40 under his or her custody or control, or purchase or receive, or

1 attempt to purchase or receive, any firearms whatsoever or any
2 other deadly weapon, if on or after January 1, 1992, he or she has
3 been admitted to a facility and is receiving inpatient treatment and,
4 in the opinion of the attending health professional who is primarily
5 responsible for the patient's treatment of a mental disorder, is a
6 danger to self or others, as specified by Section 5150, 5250, or
7 5300, even though the patient has consented to that treatment. A
8 person is not subject to this subdivision once he or she is discharged
9 from the facility.

10 (b) (1) A person shall not have in his or her possession or under
11 his or her custody or control, or purchase or receive, or attempt to
12 purchase or receive, any firearms whatsoever or any other deadly
13 weapon for a period of six months whenever, on or after January
14 1, 1992, he or she communicates to a licensed psychotherapist, as
15 defined in subdivisions (a) to (e), inclusive, of Section 1010 of the
16 Evidence Code, a serious threat of physical violence against a
17 reasonably identifiable victim or victims. The six-month period
18 shall commence from the date that the licensed psychotherapist
19 reports to the local law enforcement agency the identity of the
20 person making the communication. The prohibition provided for
21 in this subdivision shall not apply unless the licensed
22 psychotherapist notifies a local law enforcement agency of the
23 threat by that person. The person, however, may own, possess,
24 have custody or control over, or receive or purchase any firearm
25 if a superior court, pursuant to paragraph (3) and upon petition of
26 the person, has found, by a preponderance of the evidence, that
27 the person is likely to use firearms or other deadly weapons in a
28 safe and lawful manner.

29 (2) Upon receipt of the report from the local law enforcement
30 agency pursuant to subdivision (c) of Section 8105, the Department
31 of Justice shall notify by certified mail, return receipt requested,
32 a person subject to this subdivision of the following:

33 (A) That he or she is prohibited from possessing, having custody
34 or control over, receiving, or purchasing any firearm or other
35 deadly weapon for a period of six months commencing from the
36 date that the licensed psychotherapist reports to the local law
37 enforcement agency the identity of the person making the
38 communication. The notice shall state the date when the prohibition
39 commences and ends.

1 (B) That he or she may petition a court, as provided in this
2 subdivision, for an order permitting the person to own, possess,
3 control, receive, or purchase a firearm.

4 (3) Any person who is subject to paragraph (1) may petition the
5 superior court of his or her county of residence for an order that
6 he or she may own, possess, have custody or control over, receive,
7 or purchase firearms. At the time the petition is filed, the clerk of
8 the court shall set a hearing date and notify the person, the
9 Department of Justice, and the district attorney. The people of the
10 State of California shall be the respondent in the proceeding and
11 shall be represented by the district attorney. Upon motion of the
12 district attorney, or upon its own motion, the superior court may
13 transfer the petition to the county in which the person resided at
14 the time of the statements, or the county in which the person made
15 the statements. Within seven days after receiving notice of the
16 petition, the Department of Justice shall file copies of the reports
17 described in Section 8105 with the superior court. The reports shall
18 be disclosed upon request to the person and to the district attorney.
19 The district attorney shall be entitled to a continuance of the
20 hearing to a date of not less than 14 days after the district attorney
21 is notified of the hearing date by the clerk of the court. The court,
22 upon motion of the petitioner establishing that confidential
23 information is likely to be discussed during the hearing that would
24 cause harm to the person, shall conduct the hearing in camera with
25 only the relevant parties present, unless the court finds that the
26 public interest would be better served by conducting the hearing
27 in public. Notwithstanding any other provision of law, declarations,
28 police reports, including criminal history information, and any
29 other material and relevant evidence that is not excluded under
30 Section 352 of the Evidence Code, shall be admissible at the
31 hearing under this paragraph. If the court finds by a preponderance
32 of the evidence that the person would be likely to use firearms in
33 a safe and lawful manner, the court shall order that the person may
34 have custody or control over, receive, possess, or purchase firearms.
35 A copy of the order shall be submitted to the Department of Justice.
36 Upon receipt of the order, the department shall delete any reference
37 to the prohibition against firearms from the person's state summary
38 criminal history information.

39 (c) "Discharge," for the purposes of this section, does not include
40 a leave of absence from a facility.

(d) “Attending health care professional,” as used in this section, means the licensed health care professional primarily responsible for the person’s treatment who is qualified to make the decision that the person has a mental disorder and has probable cause to believe that the person is a danger to self or others.

(e) “Deadly weapon,” as used in this section and in Sections 8101, 8102, and 8103, means any weapon, the possession or concealed carrying of which is prohibited by Section 12020 of the Penal Code.

(f) “Danger to self,” as used in subdivision (a), means a voluntary person who has made a serious threat of, or attempted, suicide with the use of a firearm or other deadly weapon.

(g) A violation of subdivision (a) of, or paragraph (1) of subdivision (b) of, this section shall be a public offense, punishable by imprisonment in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(h) The prohibitions set forth in this section shall be in addition to those set forth in Section 8103.

(i) Any person admitted and receiving treatment prior to January 1, 1992, shall be governed by this section, as amended by Chapter 1090 of the Statutes of 1990, until discharged from the facility.

SEC. 626. Section 8100 of the Welfare and Institutions Code, as amended by Section 103 of Chapter 178 of the Statutes of 2010, is amended to read:

8100. (a) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly weapon, if on or after January 1, 1992, he or she has been admitted to a facility and is receiving inpatient treatment and, in the opinion of the attending health professional who is primarily responsible for the patient’s treatment of a mental disorder, is a danger to self or others, as specified by Section 5150, 5250, or 5300, even though the patient has consented to that treatment. A person is not subject to this subdivision once he or she is discharged from the facility.

(b) (1) A person shall not have in his or her possession or under his or her custody or control, or purchase or receive, or attempt to purchase or receive, any firearms whatsoever or any other deadly

1 weapon for a period of six months whenever, on or after January
2 1, 1992, he or she communicates to a licensed psychotherapist, as
3 defined in subdivisions (a) to (e), inclusive, of Section 1010 of the
4 Evidence Code, a serious threat of physical violence against a
5 reasonably identifiable victim or victims. The six-month period
6 shall commence from the date that the licensed psychotherapist
7 reports to the local law enforcement agency the identity of the
8 person making the communication. The prohibition provided for
9 in this subdivision shall not apply unless the licensed
10 psychotherapist notifies a local law enforcement agency of the
11 threat by that person. The person, however, may own, possess,
12 have custody or control over, or receive or purchase any firearm
13 if a superior court, pursuant to paragraph (3) and upon petition of
14 the person, has found, by a preponderance of the evidence, that
15 the person is likely to use firearms or other deadly weapons in a
16 safe and lawful manner.

17 (2) Upon receipt of the report from the local law enforcement
18 agency pursuant to subdivision (c) of Section 8105, the Department
19 of Justice shall notify by certified mail, return receipt requested,
20 a person subject to this subdivision of the following:

21 (A) That he or she is prohibited from possessing, having custody
22 or control over, receiving, or purchasing any firearm or other
23 deadly weapon for a period of six months commencing from the
24 date that the licensed psychotherapist reports to the local law
25 enforcement agency the identity of the person making the
26 communication. The notice shall state the date when the prohibition
27 commences and ends.

28 (B) That he or she may petition a court, as provided in this
29 subdivision, for an order permitting the person to own, possess,
30 control, receive, or purchase a firearm.

31 (3) Any person who is subject to paragraph (1) may petition the
32 superior court of his or her county of residence for an order that
33 he or she may own, possess, have custody or control over, receive,
34 or purchase firearms. At the time the petition is filed, the clerk of
35 the court shall set a hearing date and notify the person, the
36 Department of Justice, and the district attorney. The people of the
37 State of California shall be the respondent in the proceeding and
38 shall be represented by the district attorney. Upon motion of the
39 district attorney, or upon its own motion, the superior court may
40 transfer the petition to the county in which the person resided at

1 the time of the statements, or the county in which the person made
2 the statements. Within seven days after receiving notice of the
3 petition, the Department of Justice shall file copies of the reports
4 described in Section 8105 with the superior court. The reports shall
5 be disclosed upon request to the person and to the district attorney.
6 The district attorney shall be entitled to a continuance of the
7 hearing to a date of not less than 14 days after the district attorney
8 is notified of the hearing date by the clerk of the court. The court,
9 upon motion of the petitioner establishing that confidential
10 information is likely to be discussed during the hearing that would
11 cause harm to the person, shall conduct the hearing in camera with
12 only the relevant parties present, unless the court finds that the
13 public interest would be better served by conducting the hearing
14 in public. Notwithstanding any other provision of law, declarations,
15 police reports, including criminal history information, and any
16 other material and relevant evidence that is not excluded under
17 Section 352 of the Evidence Code, shall be admissible at the
18 hearing under this paragraph. If the court finds by a preponderance
19 of the evidence that the person would be likely to use firearms in
20 a safe and lawful manner, the court shall order that the person may
21 have custody or control over, receive, possess, or purchase firearms.
22 A copy of the order shall be submitted to the Department of Justice.
23 Upon receipt of the order, the department shall delete any reference
24 to the prohibition against firearms from the person's state summary
25 criminal history information.

26 (c) "Discharge," for the purposes of this section, does not include
27 a leave of absence from a facility.

28 (d) "Attending health care professional," as used in this section,
29 means the licensed health care professional primarily responsible
30 for the person's treatment who is qualified to make the decision
31 that the person has a mental disorder and has probable cause to
32 believe that the person is a danger to self or others.

33 (e) "Deadly weapon," as used in this section and in Sections
34 8101, 8102, and 8103, means any weapon, the possession or
35 concealed carrying of which is prohibited by any provision listed
36 in Section 16590 of the Penal Code.

37 (f) "Danger to self," as used in subdivision (a), means a
38 voluntary person who has made a serious threat of, or attempted,
39 suicide with the use of a firearm or other deadly weapon.

1 (g) A violation of subdivision (a) of, or paragraph (1) of
2 subdivision (b) of, this section shall be a public offense, punishable
3 by imprisonment ~~in the state prison pursuant to subdivision (h) of~~
4 *Section 1170 of the Penal Code*, or in a county jail for not more
5 than one year, by a fine not exceeding one thousand dollars
6 (\$1,000), or by both that imprisonment and fine.

7 (h) The prohibitions set forth in this section shall be in addition
8 to those set forth in Section 8103.

9 (i) Any person admitted and receiving treatment prior to January
10 1, 1992, shall be governed by this section, as amended by Chapter
11 1090 of the Statutes of 1990, until discharged from the facility.

12 *SEC. 627. Section 8101 of the Welfare and Institutions Code*
13 *is amended to read:*

14 8101. (a) Any person who shall knowingly supply, sell, give,
15 or allow possession or control of a deadly weapon to any person
16 described in Section 8100 or 8103 shall be punishable by
17 imprisonment ~~in the state prison pursuant to subdivision (h) of~~
18 *Section 1170 of the Penal Code*, or in a county jail for a period of
19 not exceeding one year, by a fine of not exceeding one thousand
20 dollars (\$1,000), or by both the fine and imprisonment.

21 (b) Any person who shall knowingly supply, sell, give, or allow
22 possession or control of a firearm to any person described in
23 Section 8100 or 8103 shall be punished by imprisonment ~~in the~~
24 ~~state prison pursuant to subdivision (h) of Section 1170 of the~~
25 *Penal Code* for two, three, or four years.

26 (c) “Deadly weapon,” as used in this section has the meaning
27 prescribed by Section 8100.

28 *SEC. 628. Section 8103 of the Welfare and Institutions Code*
29 *is amended to read:*

30 8103. (a) (1) No person who after October 1, 1955, has been
31 adjudicated by a court of any state to be a danger to others as a
32 result of a mental disorder or mental illness, or who has been
33 adjudicated to be a mentally disordered sex offender, shall purchase
34 or receive, or attempt to purchase or receive, or have in his or her
35 possession, custody, or control any firearm or any other deadly
36 weapon unless there has been issued to the person a certificate by
37 the court of adjudication upon release from treatment or at a later
38 date stating that the person may possess a firearm or any other
39 deadly weapon without endangering others, and the person has
40 not, subsequent to the issuance of the certificate, again been

1 adjudicated by a court to be a danger to others as a result of a
2 mental disorder or mental illness.

3 (2) The court shall immediately notify the Department of Justice
4 of the court order finding the individual to be a person described
5 in paragraph (1). The court shall also notify the Department of
6 Justice of any certificate issued as described in paragraph (1).

7 (b) (1) No person who has been found, pursuant to Section
8 1026 of the Penal Code or the law of any other state or the United
9 States, not guilty by reason of insanity of murder, mayhem, a
10 violation of Section 207, 209, or 209.5 of the Penal Code in which
11 the victim suffers intentionally inflicted great bodily injury,
12 carjacking or robbery in which the victim suffers great bodily
13 injury, a violation of Section 451 or 452 of the Penal Code
14 involving a trailer coach, as defined in Section 635 of the Vehicle
15 Code, or any dwelling house, a violation of paragraph (1) or (2)
16 of subdivision (a) of Section 262 or paragraph (2) or (3) of
17 subdivision (a) of Section 261 of the Penal Code, a violation of
18 Section 459 of the Penal Code in the first degree, assault with
19 intent to commit murder, a violation of Section 220 of the Penal
20 Code in which the victim suffers great bodily injury, a violation
21 of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of
22 the Penal Code, or of a felony involving death, great bodily injury,
23 or an act which poses a serious threat of bodily harm to another
24 person, or a violation of the law of any other state or the United
25 States that includes all the elements of any of the above felonies
26 as defined under California law, shall purchase or receive, or
27 attempt to purchase or receive, or have in his or her possession or
28 under his or her custody or control any firearm or any other deadly
29 weapon.

30 (2) The court shall immediately notify the Department of Justice
31 of the court order finding the person to be a person described in
32 paragraph (1).

33 (c) (1) No person who has been found, pursuant to Section 1026
34 of the Penal Code or the law of any other state or the United States,
35 not guilty by reason of insanity of any crime other than those
36 described in subdivision (b) shall purchase or receive, or attempt
37 to purchase or receive, or shall have in his or her possession,
38 custody, or control any firearm or any other deadly weapon unless
39 the court of commitment has found the person to have recovered

1 sanity, pursuant to Section 1026.2 of the Penal Code or the law of
2 any other state or the United States.

3 (2) The court shall immediately notify the Department of Justice
4 of the court order finding the person to be a person described in
5 paragraph (1). The court shall also notify the Department of Justice
6 when it finds that the person has recovered his or her sanity.

7 (d) (1) No person found by a court to be mentally incompetent
8 to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code
9 or the law of any other state or the United States, shall purchase
10 or receive, or attempt to purchase or receive, or shall have in his
11 or her possession, custody, or control any firearm or any other
12 deadly weapon, unless there has been a finding with respect to the
13 person of restoration to competence to stand trial by the committing
14 court, pursuant to Section 1372 of the Penal Code or the law of
15 any other state or the United States.

16 (2) The court shall immediately notify the Department of Justice
17 of the court order finding the person to be mentally incompetent
18 as described in paragraph (1). The court shall also notify the
19 Department of Justice when it finds that the person has recovered
20 his or her competence.

21 (e) (1) No person who has been placed under conservatorship
22 by a court, pursuant to Section 5350 or the law of any other state
23 or the United States, because the person is gravely disabled as a
24 result of a mental disorder or impairment by chronic alcoholism
25 shall purchase or receive, or attempt to purchase or receive, or
26 shall have in his or her possession, custody, or control any firearm
27 or any other deadly weapon while under the conservatorship if, at
28 the time the conservatorship was ordered or thereafter, the court
29 which imposed the conservatorship found that possession of a
30 firearm or any other deadly weapon by the person would present
31 a danger to the safety of the person or to others. Upon placing any
32 person under conservatorship, and prohibiting firearm or any other
33 deadly weapon possession by the person, the court shall notify the
34 person of this prohibition.

35 (2) The court shall immediately notify the Department of Justice
36 of the court order placing the person under conservatorship and
37 prohibiting firearm or any other deadly weapon possession by the
38 person as described in paragraph (1). The notice shall include the
39 date the conservatorship was imposed and the date the
40 conservatorship is to be terminated. If the conservatorship is

1 subsequently terminated before the date listed in the notice to the
2 Department of Justice or the court subsequently finds that
3 possession of a firearm or any other deadly weapon by the person
4 would no longer present a danger to the safety of the person or
5 others, the court shall immediately notify the Department of Justice.

6 (3) All information provided to the Department of Justice
7 pursuant to paragraph (2) shall be kept confidential, separate, and
8 apart from all other records maintained by the Department of
9 Justice, and shall be used only to determine eligibility to purchase
10 or possess firearms or other deadly weapons. Any person who
11 knowingly furnishes that information for any other purpose is
12 guilty of a misdemeanor. All the information concerning any person
13 shall be destroyed upon receipt by the Department of Justice of
14 notice of the termination of conservatorship as to that person
15 pursuant to paragraph (2).

16 (f) (1) No person who has been (A) taken into custody as
17 provided in Section 5150 because that person is a danger to himself,
18 herself, or to others, (B) assessed within the meaning of Section
19 5151, and (C) admitted to a designated facility within the meaning
20 of Sections 5151 and 5152 because that person is a danger to
21 himself, herself, or others, shall own, possess, control, receive, or
22 purchase, or attempt to own, possess, control, receive, or purchase
23 any firearm for a period of five years after the person is released
24 from the facility. A person described in the preceding sentence,
25 however, may own, possess, control, receive, or purchase, or
26 attempt to own, possess, control, receive, or purchase any firearm
27 if the superior court has, pursuant to paragraph (5), found that the
28 People of the State of California have not met their burden pursuant
29 to paragraph (6).

30 (2) (A) For each person subject to this subdivision, the facility
31 shall immediately, on the date of admission, submit a report to the
32 Department of Justice, on a form prescribed by the Department of
33 Justice, containing information that includes, but is not limited to,
34 the identity of the person and the legal grounds upon which the
35 person was admitted to the facility.

36 Any report submitted pursuant to this paragraph shall be
37 confidential, except for purposes of the court proceedings described
38 in this subdivision and for determining the eligibility of the person
39 to own, possess, control, receive, or purchase a firearm.

1 (B) Commencing July 1, 2012, facilities shall submit reports
2 pursuant to this paragraph exclusively by electronic means, in a
3 manner prescribed by the Department of Justice.

4 (3) Prior to, or concurrent with, the discharge, the facility shall
5 inform a person subject to this subdivision that he or she is
6 prohibited from owning, possessing, controlling, receiving, or
7 purchasing any firearm for a period of five years. Simultaneously,
8 the facility shall inform the person that he or she may request a
9 hearing from a court, as provided in this subdivision, for an order
10 permitting the person to own, possess, control, receive, or purchase
11 a firearm. The facility shall provide the person with a form for a
12 request for a hearing. The Department of Justice shall prescribe
13 the form. Where the person requests a hearing at the time of
14 discharge, the facility shall forward the form to the superior court
15 unless the person states that he or she will submit the form to the
16 superior court.

17 (4) The Department of Justice shall provide the form upon
18 request to any person described in paragraph (1). The Department
19 of Justice shall also provide the form to the superior court in each
20 county. A person described in paragraph (1) may make a single
21 request for a hearing at any time during the five-year period. The
22 request for hearing shall be made on the form prescribed by the
23 department or in a document that includes equivalent language.

24 (5) Any person who is subject to paragraph (1) who has
25 requested a hearing from the superior court of his or her county
26 of residence for an order that he or she may own, possess, control,
27 receive, or purchase firearms shall be given a hearing. The clerk
28 of the court shall set a hearing date and notify the person, the
29 Department of Justice, and the district attorney. The People of the
30 State of California shall be the plaintiff in the proceeding and shall
31 be represented by the district attorney. Upon motion of the district
32 attorney, or on its own motion, the superior court may transfer the
33 hearing to the county in which the person resided at the time of
34 his or her detention, the county in which the person was detained,
35 or the county in which the person was evaluated or treated. Within
36 seven days after the request for a hearing, the Department of Justice
37 shall file copies of the reports described in this section with the
38 superior court. The reports shall be disclosed upon request to the
39 person and to the district attorney. The court shall set the hearing
40 within 30 days of receipt of the request for a hearing. Upon

1 showing good cause, the district attorney shall be entitled to a
2 continuance not to exceed 14 days after the district attorney was
3 notified of the hearing date by the clerk of the court. If additional
4 continuances are granted, the total length of time for continuances
5 shall not exceed 60 days. The district attorney may notify the
6 county mental health director of the hearing who shall provide
7 information about the detention of the person that may be relevant
8 to the court and shall file that information with the superior court.
9 That information shall be disclosed to the person and to the district
10 attorney. The court, upon motion of the person subject to paragraph
11 (1) establishing that confidential information is likely to be
12 discussed during the hearing that would cause harm to the person,
13 shall conduct the hearing in camera with only the relevant parties
14 present, unless the court finds that the public interest would be
15 better served by conducting the hearing in public. Notwithstanding
16 any other law, declarations, police reports, including criminal
17 history information, and any other material and relevant evidence
18 that is not excluded under Section 352 of the Evidence Code shall
19 be admissible at the hearing under this section.

20 (6) The people shall bear the burden of showing by a
21 preponderance of the evidence that the person would not be likely
22 to use firearms in a safe and lawful manner.

23 (7) If the court finds at the hearing set forth in paragraph (5)
24 that the people have not met their burden as set forth in paragraph
25 (6), the court shall order that the person shall not be subject to the
26 five-year prohibition in this section on the ownership, control,
27 receipt, possession or purchase of firearms. A copy of the order
28 shall be submitted to the Department of Justice. Upon receipt of
29 the order, the Department of Justice shall delete any reference to
30 the prohibition against firearms from the person's state mental
31 health firearms prohibition system information.

32 (8) Where the district attorney declines or fails to go forward
33 in the hearing, the court shall order that the person shall not be
34 subject to the five-year prohibition required by this subdivision
35 on the ownership, control, receipt, possession, or purchase of
36 firearms. A copy of the order shall be submitted to the Department
37 of Justice. Upon receipt of the order, the Department of Justice
38 shall, within 15 days, delete any reference to the prohibition against
39 firearms from the person's state mental health firearms prohibition
40 system information.

1 (9) Nothing in this subdivision shall prohibit the use of reports
2 filed pursuant to this section to determine the eligibility of persons
3 to own, possess, control, receive, or purchase a firearm if the person
4 is the subject of a criminal investigation, a part of which involves
5 the ownership, possession, control, receipt, or purchase of a
6 firearm.

7 (g) (1) No person who has been certified for intensive treatment
8 under Section 5250, 5260, or 5270.15 shall own, possess, control,
9 receive, or purchase, or attempt to own, possess, control, receive,
10 or purchase any firearm for a period of five years.

11 Any person who meets the criteria contained in subdivision (e)
12 or (f) who is released from intensive treatment shall nevertheless,
13 if applicable, remain subject to the prohibition contained in
14 subdivision (e) or (f).

15 (2) (A) For each person certified for intensive treatment under
16 paragraph (1), the facility shall immediately submit a report to the
17 Department of Justice, on a form prescribed by the department,
18 containing information regarding the person, including, but not
19 limited to, the legal identity of the person and the legal grounds
20 upon which the person was certified. Any report submitted pursuant
21 to this paragraph shall only be used for the purposes specified in
22 paragraph (2) of subdivision (f).

23 (B) Commencing July 1, 2012, facilities shall submit reports
24 pursuant to this paragraph exclusively by electronic means, in a
25 manner prescribed by the Department of Justice.

26 (3) Prior to, or concurrent with, the discharge of each person
27 certified for intensive treatment under paragraph (1), the facility
28 shall inform the person of that information specified in paragraph
29 (3) of subdivision (f).

30 (4) Any person who is subject to paragraph (1) may petition the
31 superior court of his or her county of residence for an order that
32 he or she may own, possess, control, receive, or purchase firearms.
33 At the time the petition is filed, the clerk of the court shall set a
34 hearing date and notify the person, the Department of Justice, and
35 the district attorney. The People of the State of California shall be
36 the respondent in the proceeding and shall be represented by the
37 district attorney. Upon motion of the district attorney, or on its
38 own motion, the superior court may transfer the petition to the
39 county in which the person resided at the time of his or her
40 detention, the county in which the person was detained, or the

1 county in which the person was evaluated or treated. Within seven
2 days after receiving notice of the petition, the Department of Justice
3 shall file copies of the reports described in this section with the
4 superior court. The reports shall be disclosed upon request to the
5 person and to the district attorney. The district attorney shall be
6 entitled to a continuance of the hearing to a date of not less than
7 14 days after the district attorney was notified of the hearing date
8 by the clerk of the court. The district attorney may notify the county
9 mental health director of the petition, and the county mental health
10 director shall provide information about the detention of the person
11 that may be relevant to the court and shall file that information
12 with the superior court. That information shall be disclosed to the
13 person and to the district attorney. The court, upon motion of the
14 person subject to paragraph (1) establishing that confidential
15 information is likely to be discussed during the hearing that would
16 cause harm to the person, shall conduct the hearing in camera with
17 only the relevant parties present, unless the court finds that the
18 public interest would be better served by conducting the hearing
19 in public. Notwithstanding any other provision of law, any
20 declaration, police reports, including criminal history information,
21 and any other material and relevant evidence that is not excluded
22 under Section 352 of the Evidence Code, shall be admissible at
23 the hearing under this section. If the court finds by a preponderance
24 of the evidence that the person would be likely to use firearms in
25 a safe and lawful manner, the court may order that the person may
26 own, control, receive, possess, or purchase firearms. A copy of
27 the order shall be submitted to the Department of Justice. Upon
28 receipt of the order, the Department of Justice shall delete any
29 reference to the prohibition against firearms from the person's
30 state mental health firearms prohibition system information.

31 (h) For all persons identified in subdivisions (f) and (g), facilities
32 shall report to the Department of Justice as specified in those
33 subdivisions, except facilities shall not report persons under
34 subdivision (g) if the same persons previously have been reported
35 under subdivision (f).

36 Additionally, all facilities shall report to the Department of
37 Justice upon the discharge of persons from whom reports have
38 been submitted pursuant to subdivision (f) or (g). However, a report
39 shall not be filed for persons who are discharged within 31 days
40 after the date of admission.

1 (i) Every person who owns or possesses or has under his or her
2 custody or control, or purchases or receives, or attempts to purchase
3 or receive, any firearm or any other deadly weapon in violation of
4 this section shall be punished by imprisonment ~~in the state prison~~
5 *pursuant to subdivision (h) of Section 1170 of the Penal Code* or
6 in a county jail for not more than one year.

7 (j) “Deadly weapon,” as used in this section, has the meaning
8 prescribed by Section 8100.

9 *SEC. 629. Section 10980 of the Welfare and Institutions Code*
10 *is amended to read:*

11 10980. (a) Any person who, willfully and knowingly, with the
12 intent to deceive, makes a false statement or representation or
13 knowingly fails to disclose a material fact in order to obtain aid
14 under the provisions of this division or who, knowing he or she is
15 not entitled thereto, attempts to obtain aid or to continue to receive
16 aid to which he or she is not entitled, or to receive a larger amount
17 than that to which he or she is legally entitled, is guilty of a
18 misdemeanor, punishable by imprisonment in the county jail for
19 a period of not more than six months, by a fine of not more than
20 five hundred dollars (\$500), or by both imprisonment and fine.

21 (b) Any person who knowingly makes more than one application
22 for aid under the provisions of this division with the intent of
23 establishing multiple entitlements for any person for the same
24 period or who makes an application for that aid for a fictitious or
25 nonexistent person or by claiming a false identity for any person
26 is guilty of a felony, punishable by imprisonment ~~in the state prison~~
27 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
28 a period of 16 months, two years, or three years, by a fine of not
29 more than five thousand dollars (\$5,000), or by both that
30 imprisonment and fine; or by imprisonment in the county jail for
31 a period of not more than one year, or by a fine of not more than
32 one thousand dollars (\$1,000), or by both imprisonment and fine.

33 (c) Whenever any person has, willfully and knowingly, with
34 the intent to deceive, by means of false statement or representation,
35 or by failing to disclose a material fact, or by impersonation or
36 other fraudulent device, obtained or retained aid under the
37 provisions of this division for himself or herself or for a child not
38 in fact entitled thereto, the person obtaining this aid shall be
39 punished as follows:

1 (1) If the total amount of the aid obtained or retained is nine
2 hundred fifty dollars (\$950) or less, by imprisonment in the county
3 jail for a period of not more than six months, by a fine of not more
4 than five hundred dollars (\$500), or by both imprisonment and
5 fine.

6 (2) If the total amount of the aid obtained or retained is more
7 than nine hundred fifty dollars (\$950), by imprisonment ~~in the~~
8 ~~state prison~~ *pursuant to subdivision (h) of Section 1170 of the*
9 *Penal Code* for a period of 16 months, two years, or three years,
10 by a fine of not more than five thousand dollars (\$5,000), or by
11 both that imprisonment and fine; or by imprisonment in the county
12 jail for a period of not more than one year, by a fine of not more
13 than one thousand dollars (\$1,000), or by both imprisonment and
14 fine.

15 (d) Any person who knowingly uses, transfers, acquires, or
16 possesses blank authorizations to participate in the federal
17 Supplemental Nutrition Assistance Program in any manner not
18 authorized by Chapter 10 (commencing with Section 18900) of
19 Part 6 with the intent to defraud is guilty of a felony, punishable
20 by imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
21 *Section 1170 of the Penal Code* for a period of 16 months, two
22 years, or three years, by a fine of not more than five thousand
23 dollars (\$5,000), or by both that imprisonment and fine.

24 (e) Any person who counterfeits or alters or knowingly uses,
25 transfers, acquires, or possesses counterfeited or altered
26 authorizations to participate in the federal Supplemental Nutrition
27 Assistance Program or to receive food stamps or electronically
28 transferred benefits in any manner not authorized by the Food
29 Stamp Act of 1964 (Public Law 88-525 and all amendments
30 thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011
31 et seq.) or the federal regulations pursuant to the act is guilty of
32 forgery.

33 (f) Any person who fraudulently appropriates food stamps,
34 electronically transferred benefits, or authorizations to participate
35 in the federal Supplemental Nutrition Assistance Program with
36 which he or she has been entrusted pursuant to his or her duties as
37 a public employee is guilty of embezzlement of public funds.

38 (g) Any person who knowingly uses, transfers, sells, purchases,
39 or possesses food stamps, electronically transferred benefits, or
40 authorizations to participate in the federal Supplemental Nutrition

1 Assistance Program in any manner not authorized by Chapter 10
 2 (commencing with Section 18900), of Part 6, or by the federal
 3 Food Stamp Act of 1977 (Public Law 95-113 and all amendments
 4 thereto) or the Food and Nutrition Act of 2008 (7 U.S.C. Sec. 2011
 5 et seq.) (1) is guilty of a misdemeanor if the face value of the food
 6 stamp benefits or the authorizations to participate is nine hundred
 7 fifty dollars (\$950) or less, and shall be punished by imprisonment
 8 in the county jail for a period of not more than six months, by a
 9 fine of not more than five hundred dollars (\$500), or by both
 10 imprisonment and fine, or (2) is guilty of a felony if the face value
 11 of the food stamps or the authorizations to participate exceeds nine
 12 hundred fifty dollars (\$950), and shall be punished by
 13 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
 14 *Section 1170 of the Penal Code* for a period of 16 months, two
 15 years, or three years, by a fine of not more than five thousand
 16 dollars (\$5,000), or by both that imprisonment and fine, or by
 17 imprisonment in the county jail for a period of not more than one
 18 year, or by a fine of not more than one thousand dollars (\$1,000),
 19 or by both imprisonment and fine.

20 (h) (1) If the violation of subdivision (f) or (g) is committed by
 21 means of an electronic transfer of benefits, in addition and
 22 consecutive to the penalties for the violation, or attempted
 23 violation, of those subdivisions, the court shall impose the
 24 following punishment:

25 (A) If the electronic transfer of benefits exceeds fifty thousand
 26 dollars (\$50,000), an additional term *pursuant to subdivision (h)*
 27 *of Section 1170 of the Penal Code* of one year ~~in state prison~~.

28 (B) If the electronic transfer of benefits exceeds one hundred
 29 fifty thousand dollars (\$150,000), an additional term *pursuant to*
 30 *subdivision (h) of Section 1170 of the Penal Code* of two years ~~in~~
 31 ~~state prison~~.

32 (C) If the electronic transfer of benefits exceeds one million
 33 dollars (\$1,000,000), an additional term *pursuant to subdivision*
 34 *(h) of Section 1170 of the Penal Code* of three years ~~in state prison~~.

35 (D) If the electronic transfer of benefits exceeds two million
 36 five hundred thousand dollars (\$2,500,000), an additional term of
 37 four years.

38 (2) In any accusatory pleading involving multiple charges of
 39 violations of subdivision (f) or (g), or both, committed by means
 40 of an electronic transfer of benefits, the additional terms provided

1 in paragraph (1) may be imposed if the aggregate losses to the
2 victims from all violations exceed the amounts specified in this
3 paragraph and arise from a common scheme or plan.

4 (i) A person who is punished by an additional term of
5 imprisonment under another provision of law for a violation of
6 subdivision (f) or (g) shall not receive an additional term of
7 imprisonment under subdivision (h).

8 *SEC. 630. Section 14107.2 of the Welfare and Institutions Code*
9 *is amended to read:*

10 14107.2. (a) Any person who solicits or receives any
11 remuneration, including, but not restricted to, any kickback, bribe,
12 or rebate, directly or indirectly, overtly or covertly, in cash or in
13 valuable consideration of any kind, either:

14 (1) In return for the referral, or promised referral, of any
15 individual to a person for the furnishing or arranging for the
16 furnishing of any service or merchandise for which payment may
17 be made, in whole or in part, under this chapter or Chapter 8
18 (commencing with Section 14200); or

19 (2) In return for the purchasing, leasing, ordering, or arranging
20 for or recommending the purchasing, leasing, or ordering of any
21 goods, facility, service or merchandise for which payment may be
22 made, in whole or in part, under this chapter or Chapter 8
23 (commencing with Section 14200), is punishable upon a first
24 conviction by imprisonment in a county jail for not longer than
25 one year or ~~state prison~~ *imprisonment pursuant to subdivision (h)*
26 *of Section 1170 of the Penal Code*, or by a fine not exceeding ten
27 thousand dollars (\$10,000), or by both that imprisonment and fine.
28 A second or subsequent conviction shall be punishable by
29 imprisonment ~~in the state prison~~ *pursuant to subdivision (h) of*
30 *Section 1170 of the Penal Code*.

31 (b) Any person who offers or pays any remuneration, including,
32 but not restricted to, any kickback, bribe, or rebate, directly or
33 indirectly, overtly or covertly, in cash or in valuable consideration
34 of any kind, either:

35 (1) To refer any individual to a person for the furnishing or
36 arranging for furnishing of any service or merchandise for which
37 payment may be made, in whole or in part, under this chapter or
38 Chapter 8 (commencing with Section 14200); or

39 (2) To purchase, lease, order, or arrange for or recommend the
40 purchasing, leasing, or ordering of any goods, facility, service, or

1 merchandise for which payment may be made, in whole or in part,
2 under this chapter or Chapter 8 (commencing with Section 14200),
3 is punishable upon a first conviction by imprisonment in a county
4 jail for not longer than one year or ~~state prison pursuant to~~
5 *subdivision (h) of Section 1170 of the Penal Code*, or by a fine not
6 exceeding ten thousand dollars (\$10,000), or by both that
7 imprisonment and fine. A second or subsequent conviction shall
8 be punishable by imprisonment ~~in the state prison pursuant to~~
9 *subdivision (h) of Section 1170 of the Penal Code*.

10 (c) Subdivisions (a) and (b) shall not apply to the following:

11 (1) Any amount paid by an employer to an employee, who has
12 a bona fide employment relationship with that employer, for
13 employment with provision of covered items or services.

14 (2) A discount or other reduction in price obtained by a provider
15 of services or other entity under this chapter or Chapter 8
16 (commencing with Section 14200), if the reduction in price is
17 properly disclosed and reflected in the costs claimed or charges
18 made by the provider or entity under this chapter or Chapter 8
19 (commencing with Section 14200). This paragraph shall not apply
20 to consultant pharmaceutical services rendered to nursing facilities
21 nor to all categories of intermediate care facilities for the
22 developmentally disabled.

23 (3) The practices or transactions between a federally qualified
24 health center, as defined in Section 1396d(l)(2)(B) of Title 42 of
25 the United States Code, and any individual or entity shall be
26 permitted only to the extent sanctioned or permitted by federal
27 law.

28 (4) The provision of nonmonetary remuneration in the form of
29 hardware, software, or information technology and training
30 services, as described in subsections (x) and (y) of Section
31 1001.952 of Title 42 of the Code of Federal Regulations, as
32 amended October 4, 2007, as published in the Federal Register
33 (72 Fed. Reg. 56631, 56644), and subsequently amended versions.

34 (d) For purposes of this section, “kickback” means a rebate or
35 anything of value or advantage, present or prospective, or any
36 promise or undertaking to give any rebate or thing of value or
37 advantage, with a corrupt intent to unlawfully influence the person
38 to whom it is given in actions undertaken by that person in his or
39 her public, professional, or official capacity.

(e) The enforcement remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy.

SEC. 631. Section 14107.3 of the Welfare and Institutions Code is amended to read:

14107.3. Any person who knowingly and willfully charges, solicits, accepts, or receives, in addition to any amount payable under this chapter, any gift, money, contribution, donation, or other consideration as a precondition to providing services or merchandise to a Medi-Cal beneficiary for any service or merchandise in the Medi-Cal program's scope of benefits in addition to a claim submitted to the Medi-Cal program under this chapter or Chapter 8 (commencing with Section 14200), except either:

(1) To collect payments due under a contractual or legal entitlement pursuant to subdivision (b) of Section 14000; or

(2) To bill a long-term care patient or representative for the amount of the patient's share of the cost; or

(3) As provided under Section 14019.3, is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or ~~state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~, or by a fine not to exceed ten thousand dollars (\$10,000), or both such imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code~~.

SEC. 632. Section 14107.4 of the Welfare and Institutions Code is amended to read:

14107.4. (a) Any person who, with the intent to defraud, certifies as true and correct any cost report, submitted by a hospital to a state agency for reimbursement pursuant to Section 14170, who knowingly fails to disclose in writing on the cost report any significant beneficial interest, as defined in subdivision (d), which the owners of the provider, or members of the provider governing board, or employees of the provider, or independent contractor of the provider, have in the contractors or vendors to the providers, is guilty of a public offense.

(b) Any person who, with the intent to defraud, knowingly causes any material false information to be included in any cost report submitted by a hospital to a state agency for reimbursement

pursuant to Section 14170 shall be guilty of an offense punishable by imprisonment ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or by a fine not exceeding ten thousand dollars (\$10,000), or by a fine and imprisonment, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000), or by both a fine and imprisonment.

(c) The provider's chief executive officer shall certify that any cost report submitted by a hospital to a state agency for reimbursement pursuant to Section 14170 shall be true and correct. In the case of a hospital which is operated as a unit of a coordinated group of health facilities and under common management, either the hospital's chief executive officer or administrator, or the chief financial officer of the operating region of which the hospital is a part, shall certify to the accuracy of the report.

(d) As used in this section, "significant beneficial interest" means any financial interest that is equal to or greater than twenty-five thousand dollars (\$25,000) of ownership interest or 5 percent of the whole ownership or any other contractual or compensatory arrangement with vendors or contractors or immediate family members of vendors or contractors. "Immediate family" means spouse, son, daughter, father, mother, father-in-law, mother-in-law, daughter-in-law, or son-in-law. Interests held by these persons specified in subdivision (a) and members of these person's immediate family should be combined and included as a single interest.

(e) Any person who violates the provisions of subdivision (a) is punishable by imprisonment in the county jail for a period not to exceed one year or ~~in the state prison~~ pursuant to subdivision (h) of Section 1170 of the Penal Code, or by fine not to exceed five thousand dollars (\$5,000), or by both such fine and imprisonment.

SEC. 633. Section 17410 of the Welfare and Institutions Code is amended to read:

17410. Any person who with the intent to defraud, buys or receives a voucher, invoice, or similar document issued for services or merchandise under this part without furnishing such services or merchandise is punishable either by imprisonment in the county jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both ~~such that~~

1 imprisonment and fine, or by imprisonment ~~in the state prison~~
2 *pursuant to subdivision (h) of Section 1170 of the Penal Code* for
3 a period of not more than one year, by a fine of not exceeding ten
4 thousand dollars (\$10,000), or by both ~~such that~~ imprisonment
5 and fine.

6 *SEC. 635. No reimbursement is required by this act pursuant*
7 *to Section 6 of Article XIII B of the California Constitution for*
8 *certain costs that may be incurred by a local agency or school*
9 *district because, in that regard, this act creates a new crime or*
10 *infraction, eliminates a crime or infraction, or changes the penalty*
11 *for a crime or infraction, within the meaning of Section 17556 of*
12 *the Government Code, or changes the definition of a crime within*
13 *the meaning of Section 6 of Article XIII B of the California*
14 *Constitution.*

15 *However, if the Commission on State Mandates determines that*
16 *this act contains other costs mandated by the state, reimbursement*
17 *to local agencies and school districts for those costs shall be made*
18 *pursuant to Part 7 (commencing with Section 17500) of Division*
19 *4 of Title 2 of the Government Code.*

20 *SEC. 636. This act will become operative no earlier than July*
21 *1, 2011, and only upon creation of a community corrections grant*
22 *program to assist in implementing this act and upon an*
23 *appropriation to fund the grant program.*

24 *SEC. 637. In addition to any amounts provided in the Budget*
25 *Act of 2011, an appropriation of one thousand dollars (\$1,000) is*
26 *provided to the Department of Corrections and Rehabilitation for*
27 *purposes of state operations in the 2011–12 fiscal year, payable*
28 *from the General Fund.*

29 *SEC. 638. This act addresses the fiscal emergency declared*
30 *by the Governor by proclamation on January 20, 2011, pursuant*
31 *to subdivision (f) of Section 10 of Article IV of the California*
32 *Constitution.*

33 *SEC. 639. This act is a bill providing for appropriations related*
34 *to the Budget Bill within the meaning of subdivision (e) of Section*
35 *12 of Article IV of the California Constitution, has been identified*
36 *as related to the budget in the Budget Bill, and shall take effect*
37 *immediately*

38 *SEC. 640. This act is an urgency statute necessary for the*
39 *immediate preservation of the public peace, health, or safety within*

1 *the meaning of Article IV of the Constitution and shall go into*
2 *immediate effect. The facts constituting the necessity are:*

3 *In order to obtain savings related to the budget for the 2011–12*
4 *fiscal year at the earliest possible time, it is necessary for this act*
5 *to take effect immediately.*

6 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
7 ~~changes relating to the Budget Act of 2011.~~